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Part 1

TRADE LAW MODERNIZATION ACT

JANUARY 30, 1986.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

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REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3777 which on November 19, 1985, was referred jointly to the Committee on Energy and Commerce and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3777) to give the Nation's performance in international trade appropriately greater importance in the formulation of government policy, to modernize the remedies available to United States producers regarding unfair and injurious foreign trade practices, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 10, between lines 2 and 3, insert the following:

> (d) The Secretary of Commerce shall report to the Congress and to the Administering Authority on the results and status of the efforts to remove market access barriers in Japan through any market-oriented sector specific negotiations. The Secretary of Commerce shall make the first report required under the preceding sentence within 30 days after the date of the enactment of this Act and thereafter shall report within 30 days after the conclusion of any such negotiations. If the Secretary of Commerce is unable to state in any report required under the preceding sentence that substantial and satisfactory progress was

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made regarding each product sector subject to the negotiations, the Administering Authority shall take appropriate action under title III of the Trade Act of 1974.

Page 14, lines 8 and 14, insert "or Presidential proclamation" after "order" and before the quotation marks.

Page 14, line 23, insert a period after "101" and before the quotation mark.

Page 15, line 3, insert "or Presidential proclamation" after "order" and before the quotation marks.

Page 15, line 15, insert "(including the subsection heading)" after "appears".

Page 16, line 5, strike out "are" and insert "is".

Page 19, line 10, strike out "adding at the end" and inserting "striking out section 13 and inserting in lieu".

Page 19, line 19, strike out "regulations" and insert "regulation".

Page 19, line 20, strike out "their" and insert "its".

Page 19, line 14, place single quotation marks around "Secretary".

Page 39, line 15, strike out "(m)" and insert "(l)".

Page 44, line 3, strike out "customs laws," and insert "customs laws (excluding any violation for clerical errors or mistakes of fact not amounting to a pattern of negligent conduct),".

Page 47, line 7, insert "any of" before "the".

Page 48, line 17, strike out "(d)" and insert "(c)".

Page 49, line 2, strike out "therein" and insert "in paragraph (1)".

Page 54, line 7, insert "such" before "capital".

Page 55, line 2, insert "(including the section heading)" after "appears".

Page 55, line 9, insert "and 'United States Trade Representative'" before "each".

Page 57, between lines 13 and 14 insert the following:

(3) Paragraph (3) of section 306 of such Act of 1974 is amended by striking out "by the President".

Page 59, line 22, strike out "or".

Page 59, line 24, strike out the period and insert ", or".

Page 59, after line 24, insert the following:

"(iv) circumvents or facilitates the circumvention of any trade agreement to which the United States is a party.

Page 78, strike out lines 7, 8, 9, and insert the following:

(1) by striking out "President" and "President's" each place they appear and inserting in lieu thereof "Administering Authority" and "Administering Authority's", respectively; and

Page 79, line 2, strike out the period.

Page 83, line 11, strike out "(l)" and insert "(m)".

Page 84, line 4, strike out "(7)" and insert "(6)".

Page 84, line 21, strike out "(k)" and insert "(n)".

Page 84, line 25, insert "such" before "capital".

Page 85, line 13, strike out "of" and insert "a".

Page 90, lines 20 and 21, and insert "(1)" after "(b)".

Page 92, line 22, insert "except subparagraph (A)(iii)" after "appears".

Page 99, line 3, insert "(d)" after "733".

Page 101, line 19, strike out the quotation marks before the period.

Page 105, line 22, strike out "section 703(a)" and insert " subsection (a) or section".

Page 106, line 2, after "(a)" insert "or section 733(a), as the case may be".

Page 106, line 4, after "(b)" insert "or section 733(b), as the case may be,".

Page 106, line 6, after "(a)" insert "or section 733(a)".

Page 109, line 20, insert a quotation mark after the period.

Page 110, line 16, strike out "subclause" and insert "subclauses".

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PURPOSE AND SUMMARY

In response to the continuing trade crisis facing the Nation, the Committee legislation establishes a more coherent trade policy and negotiating objectives, requires the President to submit annual trade policy plans for Congressional consideration and approval, transfers decision-making authority for imposing trade remedies from the President to the United States Trade Representative (USTR) and the Secretary of Commerce, broadens the President's balance-of-payments surcharge authority, requires immediate negotiations to eliminate distortions caused by the overvalued dollar, and provides a fund to channel the proceeds from antidumping and countervailing duties collected by the Treasury back to the American firms, workers and communities injured by dumped and subsidized imports.

The bill also strengthens and streamlines the trade remedy laws to address a growing array of distortions in trade flow caused by unfair foreign trade practices. The legislation modernizes the antidumping and countervailing duty law and provides improved remedies for foreign industrial targeting, intellectual property right violations, discrimination against U.S. exports, unfair natural resource pricing, and repeat violators of U.S. customs laws. The bill allows industries to obtain "escape-clause" relief from imports on the same terms as other General Agreement on Tariffs and Trade (GATT) signatories, and provides strong incentives for import-battered industries to take measures to restore their competitiveness.

BACKGROUND AND NEED FOR THE LEGISLATION

Trade problems threaten to undermine the U.S. economy, destroy the Nation's industrial and agricultural base, reduce our standard of living, and jeopardize the world trading system and the world economy as a whole.

In each of the past three years, the U.S. economy has been jolted by record-breaking trade deficits—$40 billion in 1982, $70 billion in 1983, and $123 billion in 1984. The Nation's trade deficit is expected to reach $150 billion for 1985. Unless America's trade problems are corrected, the trade deficit is projected to reach a staggering $300 billion in 1990. In the last four years, an estimated three million American jobs have been lost because of the Nation's trade deficit. Each $1 billion of trade deficits results in the loss of 25,000 jobs. Clearly, many more Americans will lose their jobs if our trade posture continues to deteriorate.

The Committee believes that to fully address the Nation's trade problems, the Congress must use its Constitutional authority to regulate commerce with foreign nations. In 1824, Chief Justice Marshall described the nature of this responsibility to "regulate commerce":

> It has, we believe, been universally admitted that those words comprhend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend.[1]

For most of this Nation's history, the Congress has imposed tariffs and duties on imports as a means of controlling trade flows. From Colonial days until World War II, tariff and customs duties played a central role in American political debates.[2] Until 1913, tariffs and customs duties accounted for 50 to 90 percent of total Federal revenues.

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[1] *Gibbons* v. *Ogden*, 9 Wheat, 1, 6 L. Ed. 23 (1824).

[2] Dobson, John M., "Two Centuries of Tariffs: The Background and Emergence of the United States International Trade Commission," U.S. Government Printing Office, 1976.

Following World War II, a national consensus supported tariff cuts to increase trade. Periodic grants of Congressional authority to the Executive to negotiate tariff reductions have produced steady declines in the duty ratios of the U.S. Tariff Schedule, which now stand at 20 percent of the 1930 average level. Today, tariffs and customs duties represent a relatively insignificant 1.65 percent of total Federal revenues.

Bilateral and multilateral negotiations under the General Agreement on Tariffs and Trade (GATT) have provided additional delegations of authority to the Executive Branch. In the exercise of these delegations, the Executive Branch has more and more come to include the foreign policy impacts as a major factor in U.S. trade policy. These foreign policy considerations have had a growing effect on the terms of trade, often being given precedence over our Nation's short-term and long-term economic interests.

As interntional trade has become more important to our domestic economy, and as other nations have sought to manage trade flows to their own advantage, it has become clear that tariff authority alone is an insufficient basis for U.S. trade policy. The United States must develop a more coherent approach to trade—an approach which emphazies the long-tem national economic interest.

Congress acted to make limited changes in U.S. trade laws in 1962, 1974, 1979 and 1984. With a trade crisis that grows worse year after year, Congress must again exercise its responsibility. At this time, broad, far-reaching changes are needed in U.S. trade law to permit the Nation to develop and implement a coherent, predictable and realistic trade policy. American businesses and American workers now face foreign competitors who have obtained enormous benefits from the policies and practices of their governments. The world trading system has been overwhelmed by the proliferation of new and ingenious government practices to direct trade flows for national gain. From product standards, to export incentives, to exchange rate manipulations, to many other overt or subtle measures to maximize exports and minimize imports, foreign government policies create market distortions to the detriment of U.S. firms and workers. As a consequence, the United States has experienced a series of record trade deficits, forcing thousands of firms to close and causing widespread unemployment.

The vast array of unfair and often illegal foreign trade practices that deny fair opportunities for U.S. firms and workers has been documented by the three-year study by the Subcommittee on Oversight and Investigations, the investigatory arm of the Committee. In 1980, the Oversight Subcommittee began a long-term study of the economic problems of the United States, entitled "Capital Formation and Industrial Policy." As that study proceeded, it became clear that foreign trade problems and the historical lack of a coherent policy to deal with those problems were central to the economic dislocations then facing the United States industries.

A 1982 case study of the crisis facing the domestic steel industry produced vivid evidence of the failure of government policy and existing trade laws to deal with problems which arise when an important domestic market is targeted by foreign governments as part of their economic development strategy. The steel situation helped identify problems in the antidumping and countervailing duty laws, many of which are addressed in H.R. 3777.

More importantly, the continuing failure of governmental responses adequately to address clearly identified problems suggests that displomatic pressures have played too large a role in policy formulation. Like its predecessors, this Administration's responses to the recurring steel crisis have largely consisted of short-term expedients designed to minimize domestic political pressures. This legislation is designed to avoid repeats of the ad hoc approach to trade related crises by providing a coherent framework for solving trade and competitiveness problems.

Based on the initial experience of the Subcommittee with steel import problems, a new investigation was launched into the impact of unfair and illegal foreign trade practices on interstate commerce generally. Over the past three years, the Subcommittee on Oversight and Investigations had held seventeen days of public hearings, examined tens of thousands of pages of documents, heard dozens of witnesses chosen from hundreds of staff interviews, and published two reports covering roughly two-thirds of the subject matter of the hearings.

Both reports were approved by the Subcommittee without a dissenting vote in two separate Congresses. The February 1984 report entitled, "Stealing American Intellectual Property: Imitation Is Not Flattery," [3] dealt largely with the threat to the American economy posed by foreign theft of U.S. patents, copyrights and trademarks. The second unfair trade practices report, issued in April 1985 subtitled, "Criminal Components of America's Trade Problem," [4] was a more comprehensive examination of illegal foreign trade practices.

The illegal foreign trade practices examined included theft of industrial secrets, patents and copyrights, counterfeiting of a startling range of products, numerous schemes to evade tariff and quota requirements, and tariff and non-tariff barriers to U.S. exports. The Subcommittee's findings with respect to the textile and apparel industry are a record of how such practices, including transshipments, mislabeling, smuggling, and tariff evasion, have produced a massive flood of unfair and illegal shipments that threaten to overwhelm a productive, competitive American industry.

The damage to the U.S. economy from just the illegal foreign trade practices examined by the Subcommittee is staggering. The Commissioner of the Customs Service estimated that counterfeiting alone costs American firms upwards of $20 billion annually. The steel and textile and apparel industries have been devastated by fraudulent imports. Hundreds of thousands of jobs in these two industries alone have been lost to illegal imports.

These unfair and illegal foreign trade practices not only cost American firms, workers and communities dearly in the present, but they also present real threats to the future of this country by

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[3] Committee Print 98-V; February 1984.

[4] Committee Print 99-H; April 1985.

choking off economic growth. Computer hardware and software are key targets of foreign pirates. These products have a relatively short period of time to recover the capital invested in research, develpment and marketing. When important segments of their markets are skimmed off by counterfeits which incur none of these costs, the capital and incentive for developing the next generation of product is jeopardized. The same effect is achieved when high technology products such as semiconductor chips are targeted by foreign governments.

The loss of capital resources and job opportunities is not the only detrimental effect of illegal foreign-trade practices. Some endanger the health and safety of American consumers and the reputations of American companies. Counterfeit, and often substandard, pharmaceuticals, agricultural chemicals, and auto and aircraft parts are prominent examples of piratical goods that have done more than just economic damage.

The findings and recommendations of the Subcommittee regarding illegal foreign trade practices are detailed in the reports cited above and further documented in the published hearing records. They are not reproduced herein except in reference to specific provisions of this legislation. H.R. 3777 does not contain comprehensive Customs reform provisions. However, the legislation does seek to provide a meaningful deterrent to the scofflaw behavior of foreign and domestic concerns that choose to evade U.S. customs laws.

In 1985, the Subcommittee initiated a new phase of the investigation, focusing on the problems faced by American companies in exporting their products to foreign markets. The Subcommittee surveyed 521 U.S. companies and trade associations for information on tariff and non-tariff barriers to U.S. exports. Over half of the firms responded, and 751 specific foreign trade barriers to exports of U.S. goods and services were identified. Roughly 70 percent of the complaints invovled non-tariff barriers. The results of that survey were summarized by the Congressional Research Service in a report dated October 15, 1985.[5] Non-tariff barriers were characterized as follows:

> Import licensing practices accounted for the largest number of complaints, twenty percent of the total. These practices, under which administrative officials have discretionary authority to permit imports, are most prevalent in developing countries. A little more than three-fourths of all the import licensing complaints are directed at developing countries. Through the discretionary issuance of import permits, developing country authorities are able to restrain or completely curb the flow of imports to protect particular products and or sectors.
>
> Discriminatory product standards were the second most complained about non-tariff barrier, accounting for eleven percent of all complaints. Although the primary purpose of most product standards is to protect the public health, safety or welfare, they are often imposed in a manner that

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[5] "Unfair Foreign Trade Practices," 99th Cong., 1st Sess. (1985) (CRS report submitted for the hearing Record).

discriminates against imports more than domestically produced goods. According to the survey results, this is particularly true in developed countries [which were] cited for 85 percent of all product standard complaints.

Outright embargoes or bans on imports were the third most frequently complained about practice, accounting for eleven percent of all complaints. As in the case of import licenses, embarges/bans are primarily an instrument of trade control employed by developing countries. Eighty-three percent of all such complaints named developing countries.

Government subsidies in the form of low cost loans, concessionary export finance, cash payments, tax breaks, and provision of goods and services at prices below market rates ranked as the fourth most commonly complained about practice. Subsidy complaints accounted for 8 percent of all non-tariff complaints. The vast majority of subsidy complaints, 73 percent, were directed at developing countries.

So-called offset and barter complaints represented the fifth most common barrier, accounting for 6 percent of all complaints. Offset arrangements, which can require exporters to sell specified quantities of the purchaser's products, and barter arrangements, which can require exporters to purchase specified quantities of a purchasers's products as a condition of sale, are most prevalent in developing countries.

Local content requirements, where specific amounts of local materials, labor or products are required to be purchased or employed with the sale or local production of a unit of a foreign product, represented 6 percent of all complaints. As in the case of offset/barter requirements, such practices were found by respondends overwhelmingly in developing countries.

Despite the success of past multilateral negotiations in reducing and controlling quantitative restrictions to trade, quotas that specify a specific maximum of imports that are permitted per time period are still quite prevalent. According to the survey findings, quotas represented 5 percent of all complaints. Almost three-fourths of all such complaints were directed at developed country practices.

The remainder of the complaints were lodged against the following practices:

Discriminatory government procurement policies that favor domestic producers over foreigners in the opportunity to supply public purchases,

Exchange rate or financial restrictions where foreign exchange to pay for imports is limited and allocated by kind, quantity, and source of goods,

Government monopolies that bar entry into an industry,

Customs procedures and practices that assign inflated values to imports or cause costly delays, Foreign investment restrictions that restrict establishment or limit repatriation of profits,

Restrictive business practices, such as marketing and distribution restrictions that discriminate against new entrants,

Discriminatory treatment in ocean freight charges which weakens U.S. exporters' ability to compete,

Inadequate protection of trademarks, patents and copyrights, and

Non-tariff charges on imports, such as variable levies, that are used to protect domestic industries.

A breakdown of the complaints by industry sector is found in Table 1. It should be noted that the results of the Subcommittee's survey are consistent with the findings of the United States Trade Representative (USTR) in its 1985 Annual Report on National Trade Estimates, a report on significant trade barriers to U.S. exports.

TABLE 1.—LEADING NON-TARIFF BARRIERS, BY SECTOR

Sector	Number of complaints	Leading barriers per sector
Consumer goods	100	Embargoes (27), licenses (23), and standards (18) = 68% of total.
Services	73	Foreign direct investment (24), monopolies (15), and procurement (14) = 73% of total.
Industrial/construction	54	Licensing (13), exchange controls (12), and local content (7) = 59% of total.
Chemicals	52	Patents (13), standards (12), and licenses (9) = 63% of total.
Transport and agricultural equipment	45	Local content (10), offset (5) and subsidies (4) = 42% of total.
Aerospace	45	Offset (15), subsidies (10) and licenses (4) = 64% of total.
Footwear and leather	33	Embargoes (10), licenses (8), and customs (4) = 67% of total.
Electronics	30	Standards (7), licenses (8), and customs (4) = 63% of total.
Lumber and wood	30	Standards (21) and licenses (4) = 83% of total.
Ferrous ores	29	Licenses (13) = 45% of total.
Textiles and apparel	22	Licenses (8), exchange controls (3) and customs (3) = 64% of total.
Capital goods	9	Local content (4) and embargoes (3) = 78% of total.

Throughout the seventeen days of Subcommittee hearings on unfair trade practices, Members expressed concern that the approach taken by the Executive Branch in resolving unfair trade issues had failed in most instances to provide adequate remedies to domestic industries impacted by unfair trade. Subcommittee Members expressed particular frustration at the tendency of Executive Branch officials to engage in protracted negotiations with foreign governments which persist in violating international and U.S. trade laws, instead of applying enforcement sanctions available under existing U.S. law.

PURPOSE OF THE COMMITTEE LEGISLATION

The purpose of the legislation reported by the Energy and Commerce Committee is simple: to restore the competitive position of U.S. firms and workers in foreign commerce in a manner consistent with our obligations and commitments under bilateral and multilateral trade agreements. To achieve this requires a comprehensive reform of the Nation's trade laws.

In its report early in 1985, the President's Commission on Industrial Competitiveness found that the Nation's "trade laws have not been responsive to the new realities of global competition." [6] The Commission's report cited problems with the record of implementation as well as the adequacy of current laws to address the "new realities" of world trade:

> For those industries threatened by severe import penetration, U.S. trade law has often granted relief only after their injuries have become irreparable. That assistance has been granted, often on repeated occasions, without a plan—or hope—for recovery or readjustment. At the same time, U.S. trade remedies for 'unfair foreign trade practices' have been unable to respond to our competitors' new national strategies. These include approaches to trade that encourage specific export industries with a wide range of government policies, which, considered separately, may not violate international trade law, but whose aggregate effect is to distort world makets.

The President's Commission, which was made up of thirty leaders from American business, labor, government, and academia, worked for more than a year to analyze why U.S. industrial competitiveness has eroded and what changes are needed to meet the "new realities" of global competition. In the area of trade law, the Commission recommended enactment of omnibus trade legislation that would "provide mechanisms to facilitate industry adjustment to increased global competition, respond to foreign government policies aimed at fostering specific industries, and strengthen the statutes governing our response to unfair trade practices."

Like the President's Commission, the Committee finds that our laws are inadequate for dealing with the current proliferation of trade-distorting practices by foreign governments. Moreover, the magnitude of those practices has overwhelmed the international dispute resolution system established by the GATT. There is a clear parallel between the inadequacy of U.S. trade laws and the problems plaguing GATT as a regulator of world trade. The GATT system was developed in the late 1940's principally to address tariff barriers, which since then have been reduced greatly, although certainly not eliminated. Today, new, major trade distorting practices include industrial targeting, discriminatory government procurement, indirect subsidies, growth of state-owned or state-controlled companies, export performance and countertrade requirements, regulatory practices that restrict market access, and intellectual property rights violations.

The Committee bill responds directly and forcefully to the three primary causes of the Nation's trade problems: (1) the lack of a coherent U.S. trade policy; (2) the persistent growth in unfair and illegal foreign trade practices; and (3) the harmful balance-of-payments distortions caused by the overvalued dollar.

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[6] "Competition: The New Reality," Report of the President's Commission on Industrial Competitiveness, January 1985, vol. I, p. 39.

A COHERENT NATIONAL TRADE POLICY

Several key elements of the Committee bill respond to the lack of a coherent trade policy and the failure of the Executive Branch to use existing trade laws to address proven unfair and injurious foreign trade practices.

It has been twenty-three years since the current process for trade policy formulation was established, with Congress granting to the Executive Branch responsibility for the development of trade policies as well as broad discretion for deciding when and how they should be implemented. This process has resulted in relegation of the Nation's trade interests to an inferior status. The wide discretion granted to the Executive Branch also has meant the inconsistent and inadequate application of existing laws, even where statutes were designed with sufficient flexibility to address new circumstances.

The Committee firmly believes that the time has come for the Congress to reassert its role in the regulation of foreign commerce. Title I of the Committee legislation requires that the USTR, after consultations with private sector representatives, submit an annual report to the appropriate Committees of Congress, proposing a trade policy agenda for that year. The Committees will then have an opportunity to hold hearings on the goals, objectives, and priorities of U.S. trade policies, and accept, reject or modify the proposed agenda through a formal vote. This process will ensure a regular and ongoing dialogue on trade matters, and result in the development of a coherent national trade policy that addresses the long-term economic interests of the United States.

The legislation further facilitates the development of a coherent trade policy by setting forth long-term negotiating objectives for the U.S. to be incorporated in the trade policy agenda. This provision of the bill encourages the development of internationally agreed rules to regulate and eliminate specific injurious practices in the world trading system and to improve the degree of international cooperation to provide a more firm foundation for expanding trade.

The legislation also provides for a more consistent application of trade remedy laws by separating the decision-making process from the domestic and international political pressures which confront all Presidents. The Committee bill transfers authority to the USTR for actions under Sections 201, 301, and Title V of the Trade Act of 1974, and under Section 337 of the Tariff Act of 1930. Authority for actions under Section 406 of the Trade Act of 1974 are transferred to the Secretary of Commerce.

The Committee notes that the authority to administer the antidumping and countervailing duty laws already rests with the Secretary of Commerce. As a result, cases brought under these laws are generally administered in a matter-of-fact manner more consistent with statutory criteria than those brought under statutes which direct that final authority rests solely with the President. New authority granted to the USTR in Section 301 of the Trade and Tariff Act of 1984 to act against export performance requirements also demonstrates the principle that trade law decisions, including those reached under a reciprocity statute, should be insulated to the greatest extent possible from political and diplomatic considerations.

The Committee believes that domestic political or diplomatic considerations should be the exception and not the rule in determining the outcome of actions under U.S. trade laws. Current law invites the opposite outcome. Divergent interests and pressures, not relevant to the factual merits of trade cases, transform those cases into political, rather than factual decisions. Of course, the changes made by the Committee legislation cannot totally exclude political and diplomatic considerations from the trade remedy process. By transferring decision-making authority in H.R. 3777, the Committee intends that the economic factors set out in the statutes will be the principle basis for determination of most trade actions.

Four other sections of H.R. 3777 also are designed to add consistency and coherence to U.S. trade policy. Three of the Committee provisions amend the Department of Commerce Organic Act to address the problem of developing an information base from which rational trade law decisions can be made. H.R. 3777 will establish a Foreign Commerce Development Program in the Department of Commerce to analyze the effect of interstate and foreign commerce of Federal, State and local regulation of foreign and U.S. industries; evaluate and propose responses to trade barriers; compile a comprehensive inventory of unfair foreign trade practices and the goods, services, or investments affected by those practices; and identify and analyze industrial targeting programs of foreign governments and their effect on the competitiveness of U.S. industries.

The legislation also establishes a sectoral research and monitoring capability in the Department of Commerce. This provision is designed to ensure that U.S. trade policies and laws keep abreast of the ever-changing problems they are meant to address. Under current law, U.S. trade policies and laws frequently become outdated as the industrial trade policies of our trading partners evolve. Annual reports of these changing policies should allow Congress to amend the laws in a more timely fashion. Industrial sector advisory panels established by this provision will be well equipped to provide recommendations as how best to improve their industry's ability to compete.

The Committee legislation also seeks to establish a more coherent trade policy by encouraging the integration of import relief under Section 201 of the Trade Act of 1974 with a comprehensive assessment and strategy developed by an impacted industry for restoring its international competitiveness.

Some industries in the United States can only avoid continuing injury from import competition by undertaking major steps to enhance competitiveness. This new procedure remedies the lack in current law of any procedure to address this need. When an industry is injured by import competition and has developed an assessment and strategy, the fulfillment of which will aid it in avoiding future injury, the law should provide for relief which is adequate to meet such strategic needs. H.R. 3777 contains provisions designed to do that.

The Secretary of Commerce, the USTR, and the International Trade Commission (ITC) are accorded appropriate roles in working with the representatives of the impacted industry in developing meaningful relief. This legislation thus provides one critical link between trade policy and the long-term economic interests of the United States.

Finally, the Committee seeks to close the gap between remedies to unfair foreign trade practices and the victims of those practices by establishing a Commerce Development and Adjustment Fund in the Treasury of the United States. This fund would collect deposits from antidumping and countervailing duties and duties collected pursuant to action taken under other unfair trade statutes. The purpose of this fund would be to provide assistance to firms, workers, and communities damaged by those unfair trade practices.

RESPONDING TO UNFAIR AND ILLEGAL TRADE PRACTICES

Foreign industrial targeting

The existence of foreign industrial targeting is well documented. Japanese targeting practices have received much public attention, principally as a result of the celebrated television dumping cases,[7] the machine tool cases filed by Houdaille, and more recently the October 1985 detailed petition of the Semiconductor Industry Association entitled "Japanese Protection and Promotion of the Semiconductor Industry." The most thorough analyses of targeting are contained in a series of reports by the ITC over the period October, 1983, through January, 1985.

In three volumes, the ITC documented targeting practices of Japan, European Countries, Korea, Brazil, Taiwan, Mexico, and Canada. (See Table 2.) In mid-1985, the U.S. Trade Representative along with the Departments of Labor and Commerce submitted to Congress additional detailed documentation of foreign industrial targeting practices of other nations. In his testimony before the Oversight Subcommittee in October, 1985, U.S. Trade Representative Clayton Yeutter made the following observation about targeting:

> Without doubt, some of our trading partners are engaging in targeting, and some of them have done it very effectively and carved out some very significant market niches internationally and here in this country. We must decide soon as a nation how to respond to that issue.[8]

TABLE 2.—*International Trade Commission [ITC] reports of industries targeted by foreign governments*

JAPAN—OCTOBER 1983	
Aircraft	Iron and steel
Aluminum	Machine tools
Automobiles	Semiconductors
Computers	Telecommunications
EUROPEAN COMMUNITY—APRIL 1984	
FRANCE	
Aircraft and aerospace	Apparel

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[7] Committee Print, 99-H, pp. 94-97.

[8] See supra note 5 (Statement of the Honorable Clayton Yeutter, U.S. Trade Representative).

Autos and trucks Telecommunications Electronics Heavy electrical equipment	Machine tools Semiconductors Textiles
UNITED KINGDOM	
Aircraft and aerospace Automobiles Computers/peripherals/telecom	Heavy electrical equipment Machine tools Semiconductors
WEST GERMANY	
Aircraft and aerospace Autos Information technologies	Machine tools Semiconductors
ITALY	
Apparel	Autos
EC POLICIES	
Coal Computers/peripherals Machine tools	Steel Textiles

BRAZIL, CANADA, KOREA, MEXICO, TAIWAN—JANUARY 1985

BRAZIL	
Aerospace Autos Computers Heavy electrical equipment Footwear Pharmaceuticals	Semiconductors Shipbuilding Steel Telecommunications Textiles and apparel
CANADA	
Aerospace Autos	Petroleum/gas Telecommunications
KOREA	
Autos Computers Heavy electrical equipment Machine tools	Pharmaceuticals Shipbuilding Steel Textiles and apparel
MEXICO	
Autos Computers Petroleum/gas	Pharmaceuticals Steel
TAIWAN	
Autos Electronics Machine tools Petroleum/gas	Pharmaceuticals Shipbuilding Steel Textiles and apparel

Current U.S. trade laws are particularly inadequate to address the challenges now being posed to U.S. industries by injurious foreign industrial targeting policies. Increasingly, foreign governments are implementing industrial targeting policies directed at promoting and increasing the international competitiveness and market share of particular industries. These programs, which often combine direct subsidies, preferential financing, tax incentives, discriminatory procurement practices, government support for or participation in research and development, government toleration of or participation in cooperative research, production or marketing efforts, and numerous other measures, can and often do negatively affect the competitive position of U.S. industries in the U.S. market or third country markets.

The Committee believes that the Nation's firms and workers should have a clear and predictable standard for seeking Executive action to respond to the insidious problem of targeting. The ITC, in its study of Japanese targeting, included an analysis of the adequacy of current U.S. trade laws to address the problem. The ITC concluded that changes to Section 301 of the 1974 Trade Act, many of which are incorporated in H.R. 3777, would be necessary to adequately address foreign industrial targeting.

The adverse consequences for U.S. industries of targeting are distinguishable from those associated with dumping and export subsidization as traditionally defined and, as such, are not adequately addressed by existing U.S. trade remedies legislation. The adverse effects of successful targeting are frequently evident in an erosion of U.S. market share in third countries, as well as increased imports in the U.S. market. Moreover, the competitive position of the foreign beneficiary of the targeting practices is often enhanced before any erosion of market share here or abroad actually has occurred. Often the artificial competitive advantage does not disappear after the targeting program has been terminated. The Committee believes that, because of the complexity of the issues involved, the problem of targeting is best handled under Section 301 of the Trade Act of 1974, as modified by this legislation.

The Committee believes that the United States must be in a position to respond to these unfair market distorting practices of foreign governments, and the changes made by H.R. 3777 will provide the means to address the growing practice of industrial targeting.

Natural resource pricing

Over the last two decades, resource-rich developing countries have been increasing their capacity to use those resources to manufacture other products. Often the resource is a major cost component of the finished product. In many cases, these valuable resources are owned, controlled, or highly regulated by the national or local government. This ownership or control is often reflected in restrictions on the development, access for sale, or price of the resource.

When these restrictions produce inequitable or discriminatory conditions with respect to the sale of a resource-derived product, they place United States producers at a distinct disadvantage. Two such examples have been described as follows:

> [T]he establishment by the foreign government of what is termed a "dual" or "two-tier" pricing system whereby the government of the exporting nation sets the selling price of the resource at a level lower for domestic than for foreign purchasers. Where the natural resource is made available for export by the foreign country at the higher

> price, or is available to United States producers from alternative sources but at equally high prices, those producers are placed at a disadvantage vis-a-vis producers in the dual pricing nation. United States competitors must spend greater amounts to purchase the same quantity of resource inputs, thus increasing the cost of producing downstream merchandise. . .
>
> The competitive problem . . . also arises when a resource-owning nation does not formally engage in dual pricing, as when no export sales of the resource are made. Where the nation sells the resource to domestic producers at a price lower than that available to foreign producers on the world market, the latter are again at a competitive disadvantage in relation to the former.[9]

U.S. producers in areas such as fertilizer, petrochemicals, refining, cement, carbon-black, and wood products thus have taken the position that they are competing with state-owned, controlled or regulated enterprises *and* with unfairly priced natural resource inputs. Although competitive advantages derived from legitimate, non-discriminatory exercises of sovereign authority are generally not considered unfair trade practices, the advantage conferred by pricing practices which are based on artificially lowered costs resulting from government control is unfair, and, where proven, should be eliminated.

To address these problems, the Committee legislation clarifies that the scope of Section 301 of the Trade Act of 1974 includes "unfair and inequitable natural resource input pricing" as an unfair trade practice. The purpose of adding a specific provision to address the problem of natural resource pricing is to discourage the growing use of two-tiered pricing arrangements and other below cost pricing structures by resource-rich countries. These policies unfairly deny American firms access to the natural resources at the fair value of those resources. Thus, they have the effect of subsidizing their domestic producers.

The Committee legislation provides for two methods of identifying the unfair and inequitable natural resource pricing level: the export price and, in cases where there are no exports or the export price is distorted, the fair market value. In some products, prices may vary a great deal from market to market, and a realistic fair market value finding would have to assess such factors as the comparative advantage of the resource-producing country and its access or lack to lucrative export markets. Comparative advantage does not, in this context, refer to artificial advantages imposed through government control or regulation, since this would have the effect of negating the entire provision, but refers instead to any cost advantages enjoyed by such country by virtue of indigenous factors such as abundant supplies, lower production costs, or lower transportation costs.

The term "natural resource product" is not defined in the bill. It is left flexible enough to apply in appropriate circumstances to any natural resource, including timber and wood products, if such resource is the subject of a two-tiered or below fair market value government pricing scheme and is a significant portion of the resulting manufactured product. Moreover, the term is broad enough to apply to cases where the government pricing scheme applies to different stages of processing or refinement of the basic resource product.

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[9] Barshefsky, Diamond and Ellis, "Foreign Government Regulation of Natural Resources: Problems and Remedies Under United States International Trade Laws," 21 Stanford Journal of International Law 29, 35-36 (1985).

Intellectual property rights

The major findings of the February, 1984, report on unfair trade practices by the Subcommittee on Oversight and Investigations (Committee Print 98-V) make clear that the laws that protect American industry and consumers from foreign counterfeits must be strengthened.

The Subcommittee unanimously concluded that the sale and use of foreign counterfeit products and other violations of U.S. intellectual property rights cost American companies billions of dollars in sales at home and abroad. Moreover, the substandard performance of many of these products threatens consumers and tarnishes the reputation of the American manufacturer and American products generally. By stealing some or all of the market for a successful product, pirates can prevent that company from recouping the capital invested in researching, developing and marketing the product. For a small company, this can be fatal. But even for a large company, the ability to generate the investment capital necessary to develop new products and remain competitive in world markets is impaired. The effect of these and other unfair trade practices is to significantly increase our huge balance-of-payments deficit, which negatively affects the growth of the domestic economy generally.

The growing awareness of the damage to our economy and to our future economic growth from the theft of American intellectual property was amply demonstrated in the 98th Congress when six of the ten major legislative recommendations made by the Subcommittee were enacted into law. However, one recommendation not addressed in the last Congress was reform of Section 337 of the Tariff Act of 1930.

The Committee legislation addresses the reform of Section 337 and thus strengthens the protections for U.S. intellectual property from foreign counterfeits. Currently, the law requires that petitioners seeking relief under Section 337 meet an injury test. This burden is far more stringent than that required of a person who sues for relief from domestically produced counterfeits in Federal district court. In that case, district courts are empowered to issue final remedies without requiring proof of injury. Proof of infringement of a valid patent, trademark, or copyright is all that is needed to obtain a permanent injunction against further infringement.

This same standard should apply to foreign counterfeits brought into the United States. The Committee legislation, therefore, provides that where infringement of valid intellectual property by foreign counterfeits has been shown, the injury test required under Section 337 of the Tariff Act of 1930 should be deemed to have been met.

The principal benefit of this change will be to reduce the cost of Section 337 proceedings and thus to make relief from foreign counterfeits or the threat of foreign counterfeits more accessible to the victims of such practices. The Committee legislation also recognizes that the current timetable for ITC action in Section 337 is often too long to permit effective relief to victims of infringement. Further, by removing the requirement of an injury test, Section 337 proceedings will be less consuming of administrative time and resources. Therefore, the legislation significantly reduces the time limit for ITC action.

Scofflaw penalties

The Committee legislation would deny the privilege of introducing foreign goods or services into the commerce of the U.S. to persons who are convicted of multiple customs law violations.

This provision was unanimously recommended by the Members of the Subcommittee on Oversight and Investigations in its April, 1985, report on unfair foreign trade practices. The endorsement was based on an extensive hearing record, which documented a broad range and growing number of violations of U.S. laws involving imports. The Committee strongly supports the responsible conduct of international commerce. However, in cases where foreign parties engage in a pattern of lawbreaking, and where this illegal activity may threaten the health and safety of American consumers, steal jobs from working people and cheat law abiding firms out of honest profits, the right of the scofflaw to sell goods in the U.S. market should be forfeited. Similar sanctions must apply to those U.S. firms which repeatedly violate or conspire to violate U.S. customs laws at the expense of the safety and health, jobs, and the legitimate return on investment of their fellow citizens.

In recent years, at least two American industries, steel and textiles and apparel, have been virtually devastated by illegal imports. The ability to enforce our laws against these and other illegal imports has been sorely tested because of the massive volume of shipments into the United States. Existing manpower in the U.S. Customs Service has been unable to control the problem. Yet, this Administration has attempted to cut the budget of the U.S. Customs Service in every submission it has made to Congress since 1981. Fortunately, all such proposals have been rejected.

This is no substitute for more personnel if our existing import laws and trade agreements are to be enforced. The Committee recognizes that it may not be possible to return to historic levels of enforcement capacity at our borders. In an effort to somehow restrict the flow of illegal merchandise, this legislation significantly increases the penalty for Customs fraud and, thus, should serve an important deterrent function.

While it may not be possible to return to historical levels of enforcement capacity at our borders, this legislation significantly increases the penalty for Customs fraud and, thus, should serve an important deterrent function.

Enactment of this provision with its threat of exclusion from the U.S. market should do far more to assure the honesty of future Customs entries of foreign concerns such as Mitsui, Marubeni, Thyseen, C. Itoh and Daewoo than the millions of dollars they have paid, or will likely soon pay in customs fraud penalties. The threat of financial penalties is often insignificant compared to potential profits which may be realized from illegal entries. The Committee believes that this provision will likely have a similar deterrent effect on those American companies which conspire with foreign concerns to evade U.S. customs laws. It is hoped that the prospect of exclusion from the import market will also significantly reduce the "tariff engineering" that is particularly rampant in the apparel industry.

The Committee expects that this provision will also greatly decrease the number of false entries made to the U.S. Customs Service to evade payment of duties and, thus, will significantly enhance the revenues of the United States.

Circumvention of trade agreements

The Committee legislation would make expicit the powers of the USTR to retaliate against "any act, policy or practice of a foreign government or instrumentality which circumvents or facilitates the circumvention of any trade agreement to which the United States is a party." This amendment to Section 301 of the Trade Act of 1974 gives the President or the USTR the explicit authority to retaliate against countries which enter into orderly marketing arrangements with the United States and then attempt to circumvent those agreements by transshipping goods or services through third countries or by unilaterally abrogating the terms and conditions of those agreements by refusing to honor accepted interpretations of such terms and conditions. It also gives the Administering Authority explicit power to retaliate against a third country which acts to facilitate such transshipment or other circumvention.

While this provision would affect the trade in all commodities subject to quantitative restraint as a result of a trade agreement, one significant case involves attempts to transship steel mill products to evade voluntary restraint agreements (VRA's). Several countries which signed good faith agreements in 1984 and 1985 to restrict their steel imports into the United States in return for immunity from antidumping, countervailing duty, and other unfair trade practice findings are apparently attempting to circumvent those agreements by establishing finishing facilities in third countries. A proppposed oil country tubular goods mill in Panama which would utilize Brazilian steel, and a standard pipe mill to be built in Costa Rica which would use Korean steel, are two cases in point. These facilities would be uneconomic in their own right, save for the VARA's between the United States and Brazil, Korea, and other major steel producing nations. Under this provision, the Administering Authority is given explicit authority to retaliate against both the country which supplies steel for transshipment to the United States, and the country that permits the establishment of these finishing mills for the purpose of facilitating the transshipment.

Discrimination against U.S. exports

The Subcommittee on Oversight and Investigations has conducted four days of hearings into the problem of tariff and non-tariff barriers to U.S. exports. As part of this investigation, over five hundred U.S. firms and trade associations were surveyed to determine the extent of these unfair export barriers. Of the 751 separate non-tariff barrier complaints received by the Subcommittee, thirty-two involved local content/performance requirements, twenty-four involved government procurement, sixty-two involved discriminatoy product standards, and fifteen involved restrictive business practices, for a total of twenty-one percent of the non-tariff barriers identified in the survey.

The Committee legislation will give injured parties the right to petition for an investigation and ultimate Section 301 relief if these foreign procurement and regulatory practices are found to unfairly discriminate against U.S. firms. The bill amends the Department of Commerce Organic Act to require the Secretary, upon petition, to investigate allegations that particular procurement practices or regulatory requirements of foreign governments unfairly discriminate against U.S. firms. Upon an affirmative determination by the Secretary, such a discriminatory procurement practice or regulatory requirement is to be treated as a violation of Section 301(a)(1)(B) of the Trade Act of 1974.

Injurious imports

The Committee legislation makes two fundamental changes in Section 201 of the Trade Act of 1974, which provides so-called "escape clause" relief from injurious import competition. First, the injury causation standard is changed from "substantial cause" to "cause." Thus, the ITC would be authorized to recommend import relief if an article "is being imported into the United States in such increased quantities as to be the cause of serious injury or the threat thereof."

The proposed change in the injury causation standard is meant to correct a problem in interpreting and applying the current "substantial cause" language. The existing standard, it should be noted, is unique to United States law; no other GATT nation imposes a similar criterion for escape clause relief. One of the reasons for the proposed change is that it has been almost impossible to obtain an affirmative causation determination during an economic recession. There is no evidence that Congress intended such a limitation. Secondly, the ITC has never developed any consistent methodology to weigh various causes of injury in order to determine if imports are a substantial cause. Each Commissioner has made independent judgments, never based on consistent criteria or methodology about the issue of "substantial" cause. The statute cannot be fairly administered on such a basis.

For example, two recent ITC decisions in the transportation industry have been diametrically opposed on the issue of the significance of an economic recession in evaluating the causation question. It is instructive to quote from these decisions. In the 1980 motor vehicles case, Chairman Alberger gave the Commission's view that the recession was a far greater cause of injury to the U.S. auto industry than imports. Chairman Eckes gave a completely different interpretation of the Commission in the 1983 motorcycle case.

> Chairman ALBERGER. The statute defines the term "substantial cause" as "a cause which is important and not less than any other cause." Applying this test, I have found the decline in demand for new automobiles and light trucks owing to the general recessionary conditions in the United States economy to be a far greater cause of the domestic industries' plight than the increase in imports.[10]
>
> Chairman ECKES. In reaching this conclusion I have considered the significance of the present recession in my analysis. Without a doubt the unusual length and severity of the present recession has created unique problems for the domestic motorcycle industry. Without a doubt the rise in joblessness, particularly among blue-collar workers, who constitute the prime market for heavyweight motorcycles, has had a severe impact on the domestic industry. Nonetheless, if the Commission were to analyze the causation question in this way, it would be impossible in many cases for a cyclical industry experiencing serious injury to obtain relief under Section 201 during a recession. In my opinion Congress could not have intended for the Commission to interpret the law this way.[11]

These two diametrically opposed views of how "substantial" cause should be defined demonstrate the need to bring the United States standard into conformance with the escape clause provisions of the GATT, and thereby allow it to be defined in a clear and predictable manner.

The second fundamental change would permit firms and workers who seek import relief to assess the problems of their industry and develop a strategy for improving their competitiveness. The purpose of this optional track, as discussed previously, is to encourage an industry to use the escape clause to enhance competitivensss or otherwise adjust to new methods of competition, not just to receive temporary protection.

The Committee also has sought to improve the Section 201 process in several other ways. This section specifies additional factors for the ITC to consider in making determinations regarding the threat of injury in order to facilitate the more timely use of temporary import relief. All too often, industries have not been able to obtain Section 201 relief until they have been devastated by imports and the temporary relief has come too late to materially impact the ability of the industry to make the capital investments and other changes necessary to regain international competitiveness.

For similar but more short-term reasons, the legislation provides for provisional relief upon a finding of critical circumstance during the consideration of a Section 201 petition. This provision is to insure that further injury does not result from an import surge as a consequence of the filing of a petition.

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[10] "Motor Vehicles and Certain Chassis and Bodies Thereof," U.S.I.T.C. Publication 1110 (December 1980) p. 21.

[11] "Motorcycles, and Engines and Powertrain Subassemblies Thereof," U.S.I.T.C. Publication 1342 (February 1983) p. 15.

In cases where the ITC finds that the injury is from imports
which the foreign government restricts its own imports and t
diverts goods to the U.S. market, or engages in export expans
practices, the Administering Authority is directed to seek a neg
ated end to such practices.

The Committee has also provided that in cases where actio
taken under Title II of the Trade Act of 1974 involving the imp
of capital goods, federal subsidies of such imports, and most spe
cally tax subsidies, shall be terminated.

Dumping and Government subsidies

Foreign companies and governments have recently develo
unfair trading practices which effectively circumvent U.S. l
providing remedies against below cost exports and subsidies.
result is that goods are imported into the U.S. which have achie
their competitive advantage unfairly. H.R. 3777 amends the
rent U.S. antidumping and countervailing duty laws to close
loopholes in those laws which allow these unfair practices to
sist and to make procedures under those laws efficient and e
tive.

Both dumping and subsidization of exports have been conside
actionable trade law violations for decades in the United Sta
These practices were also condemned when the GATT was ado
in 1948. However, foreign importers have consistently found
ways to carry on these practices free from sanctions. One very
and injurious current unfair trade practice, which is not adequ
ly addressed by U.S. trade law, is "diversionary dumping." Di
sionary dumping occurs when an input product, which has
found to be dumped in the United States, is diverted to produ
that incorporate the input product into a material that is then
in the United States. This may involve a diversion to a produce
a third country. For example, Korean steel subject to a dum
finding is incorporated into Japanese drilling rigs which are b
sold in the United States.

Diversionary dumping destroys the effectiveness of any U.S.
dumping order directed at a product that can be readily dive
for incorporation into downstream products for sale in the U
States. H.R. 3777 responds to this situation by amending the
rent antidumping law to apply to diversionary dumping. The
product containing the dumped input would be subject to addi
al duties if it is determined that the unfair price of the inpu
sulted in an ability to sell the final product in the United Stat
less than its fair value.

This new provision would apply only after a finding has
made that the input product was injuriously dumped. This le
tion is a reasonable response to the inevitable diversion of du
input products to foreign producers of downstream products,
the input is the subject of an antidumping duty in the U
States.

Foreign governments have also developed practices to avoid
tions under U.S. countervailing duty law. A number of devel
countries have agreed to phase out and end the subsidizati
their exports under the GATT Subsidies Code. In exchange
United States has granted these countries the benefit of the i

test under the U.S. countervailing duty law. Yet, some of these countries have not honored their agreements and have instead continued to subsidize their exports. These countries have continued to receive the added protection afforded by the injury test. The Committee legislation would require that developing countries honor their agreements by actually phasing down and eliminating export subsidies. The President would review annually each country's practices to determine whether that country is actually complying with its obligations. If a country reneges on the "terms" it accepted in acceding to the Code, the U.S. would be permitted to withdraw the benefit of the injury test under the countervailing duty law.

Another anomaly that immunizes unfair trade practices under the U.S. countervailing duty and antidumping duty laws is that U.S. makers of the component parts of a product are not permitted to challenge the evasion of our trade laws that occurs when dumped and subsidized products are being imported as components of other products. The unfairness of dumping and subsidization does not disappear when the beneficiary product is a component of another product and is further processed. Instead, the unfair benefits simply assist a second industry. H.R. 3777 would permit companies or workers making component parts to file and participate in countervailing and antidumping duty actions.

The legislation makes several other changes in the antidumping and countervailing duty statutes to correct inequities or promote more effective administration. The critical circumstances provisions of these sections have been reformed to further discourage import surges in anticipation of the imposition of additional duties. Certain repetitious preliminary determinations are waived in cases of persistent dumping and subsidization. The legislation also contains reform of the expedited review process for antidumping orders. Antidumping and countervailing duty rebates for reexported goods are banned, as are certain exceptions to country-of-origin labeling. The imposition of an offsetting export tax by a foreign government may not be used as a rationale to suspend countervailing duty investigations.

The legislation makes several other important reforms in the method of calculating antidumping duties. These considerations involved in calculating foreign market value have been more carefully defined. Upstream subsidy provisions have been further clarified. Flexibility has been introduced to certain provisions involving the role of foreign governments in contracting practices.

Evidence of foreign targeting and import restrictions must be considered by the ITC when the threat of material injury is alleged in an antidumping petition.

Clarifications have been made in regard to the disclosure of confidential information in Section 777 of the Tariff Act of 1930.

The amendments made by the Committee legislation to the countervailing and antidumping laws thus: (1) broaden the availability of those laws to U.S. industries that are being damaged by unfair trade practices but have been denied relief because the laws are too narrowly defined, or are interpreted and administered in such a way as to limit their effectiveness; and (2) provide more predictability and fairness to the administration of those laws.

Other procedural reforms

The legislation makes other improvements in existing trade laws to promote their efficient administration, make remedies more timely and less costly, and integrate trade remedies with the long-term economic needs of this country.

Among the more notable improvements are several changes in the procedures under Title III of the Trade Act of 1974. The Committee has added a new requirement to Section 301 that the Administering Authority present questionnaires to the foreign governments and enterprises. If such information is inadequate, the Administering Authority may rely on the information in the petition. This is designed to ensure that, in fact, Section 301 determinations are based on the very best and most complete information.

Under Section 305, it is now possible that in cases in which relief action is appropriate, action will not be taken until twelve months after the date on which the investigation is initiated. During this delay, the industry may suffer irreparable harm. Provisional relief has been added to guard against this possibility.

Currently under Section 301, there is no certainty as to when relief action, if any, will be taken. U.S. industries have, as a result, not found Section 301 to be a reliable source of relief. The bill seeks to remedy this inadequacy by providing a definitive time frame within which final determinations and action must be taken. The maximum period of twelve months incorporated in the legislation is both long enough to permit a reasoned determination and short enough to provide relief in a timely manner.

MARKET-ORIENTED, SECTOR SPECIFIC TRADE NEGOTIATIONS

The Committee is seriously concerned about delay in the recently concluded round of market oriented, sector specific trade negotiations with Japan. These negotiations are the product of commitments to open trading arrangements made to President Reagan by the Prime Minister of Japan. The parties have expressed a willingness to continue sector specific negotiations in the future. The nontariff barriers erected by the Japanese are among the most difficult faced by American exports. In order to facilitate the market opening process, the Committee legislation provides for action by the USTR under Section 301 of the Trade Act of 1974, if the Secretary of Commerce determines that satisfactory progress has not been achieved in these ongoing negotiations.

EXCHANGE RATE PROBLEMS

From 1980 until late 1985, the exchange rate of the dollar became overvalued by up to 40 percent against the trade-weighted average of other major currencies. As a result, during this same period, the U.S. trade position deteriorated with every one of the world's twenty-five largest trading countries. Although recent steps by the Administration and major trading nations have alleviated this situation to some extent, the dollar continues to be overvalued relative to other currencies.

Perhaps the single most imnportant key to improving the U.S. trade picture is, therefore, continuing to improve the exchange rate situation. Estimates are that the continued overvaluation of the dollar has accounted for one-half to three-quarters of the U.S. trade deficit.

The reported bill contains important provisions designed to create greater exchange rate stability. The bill amends Section 122 of the Trade Act of 1974, which provides discretionary authority to the President to take temporary measures to correct an international balance-of-payments disequilibrium. The bill raises the maximum temporary import surcharge from 15 percent to 25 percent. The maximum time limit for such action is also lengthened from five months to two years, renewable through legislative action.

By providing a definition of balance-of-payments disequilibrium as a current account imbalance in excess of 1 percent of U.S. Gross National Product that persists for longer than eighteen months, the bill defines the situation in which the President may impose an import surcharge to offset the imbalance. The President is also provided with more flexibility to deal with today's larger and more persistent balance-of-payments deficit.

The bill also recognizes that the best, and perhaps the only, way of affecting exchange rates in the long run is through continued coordinated action on the part of the major trading countries. As a result, the bill directs the President to immediately begin negotiations with the appropriate foreign governments to eliminate the balance-of-payments disequilibrium.

The bill gives the highest priority to such negotiations by saying that the President may not initiate multilateral negotiations under the GATT until he has commenced negotiations to eliminate the balance-of-payments disequilibrium. Nor may the President conclude an agreement under GATT during the one-year period following the date on which he commences negotiations to deal with the balance-of-payments problem. In this way, the bill makes it clear that serious balance-of-payments negotiations should be carried out diligently.

GATT CONSISTENCY

Concerns have been expressed about whether the provisions of H.R. 3777 are consistent with the obligations of the United States under the GATT. The Committee believes these concerns are not well-founded.

The GATT permits measures to ensure compliance with antidumping, countervailing duty, and other unfair trade practice laws, so long as such measures are not arbitrary, discriminatory, or represent disguised import restrictions. Article XX of GATT provides in pertinent part that:

> [N]othing in the Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> "(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement * * *."

The provisions of H.R. 3777 are intended to preserve the integrity of and to secure compliance with the trade laws of the United

States. Accordingly, they are well within both the spirit and the letter of the GATT.

With respect to changes in the antidumping laws, Article VI of the GATT states that "dumping is to be condemned." The International Antidumping Code, which is a GATT-sanctioned agreement, permits the contracting parties to engage in "antidumping practices." The term "antidumping practices" indicates an intent that countries be able to respond to a wide range of dumping practices, including "diversionary dumping."

With respect to countervailing duty law amendments, the GATT Subsidies Code does not restrict the ability of the United States to take action against nations which have not signed the Subsidies Code, or which ignore it even though they have agreed to it. Moreover, the standards that H.R. 3777 impose on nations agreeing to the Subsidies Code are consistent with Article 19 of the Code, which states that the Code "shall be open to accession by any (government) on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the signatories."

Similar interpretations apply to the provisions in the legislation dealing with foreign industrial targeting and other amendments to Section 301 of the Trade Act of 1974. While there is currently no international consensus on the issue of targeting, Congress and the President have already taken action to stop the injury such practices have caused to American interests. Section 301 of the Trade and Tariff Act of 1984 enacted into law authority to retaliate against practices which the GATT itself has ruled are not inconsistent with its Articles of Agreement, but which the Administration believes cause injury to U.S. firms and workers. The amendments in H.R. 3777 provide, like the provisions of the Trade and Tariff Act of 1984, for termination or modification of actions taken, or payment of compensation, if the contracting parties to the GATT disapprove of any action taken to respond to foreign industrial targeting.

Section 301 of the Trade Act of 1974 generally is the corrollary to the GATT provisions for consultation and dispute resolution. Section 301 and the changes in it made by H.R. 3777 are entirely consistent in substance and procedure with these provisions of GATT. The broad scope of Section 301, and its clear purpose—obtaining elimination of unfair trade practices through the threat of retaliation—have been preserved and strengthened by H.R. 3777, but the legislation does not extend this provision beyond the bounds of GATT-sanctioned negotiation and retaliation.

Finally, the changes made by H.R. 3777 in Section 201 of the Trade Act of 1974 are, again, wholly consistent with the GATT. GATT Article XIX, "Emergency Action on Imports of Particular Products," permits import restrictions if imports have caused serious injury. The GATT does not call for a test of "substantial" cause. This clearly includes imports which have increased as a result of tariff decreases, or for any other reason.

The Committee emphasizes again that in drafting H.R. 3777, it was guided by a desire to maintain the consistency of U.S. trade law with the GATT. Both the procedural and substantive amendments in H.R. 3777 allow the United States to adhere fully to the

’, and to take steps to remedy proven GATT violations which
ıe established through traditional GATT processes, by acting
ecisely the same manner as it would if such a violation were
ished under current law. While other nations may view the
law reforms in H.R. 3777 as unilateral actions arguably out-
he GATT, the Committee rejects this approach. The legisla-
esponds to the challenge of new unfair acts and practices that
en to erode the international framework of free and open
trade by restricting trade opportunities for those nations
iolate GATT through the use of such acts or practices. These
s injure or impair the benefits of open trade for the United
and other GATT signatories, and therefore require clear and
table responses.

CONCLUSION

onclusion, the Committee feels that the reported bill is a
step forward in seriously tackling some of the United States'
difficult trade problems. The clear aim of these changes is to
ve the ability of U.S. firms to compete fairly in the world
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HEARINGS

Subcommittee on Commerce, Transportation and Tourism
wo days of hearings on the bill H.R. 1950. At the first the
g on June 26, 1985 the following witnesses testified:

John D. Ong, Chairman of the Board and Chief Executive Of-
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Amory Houghton, Jr., Chairman Executive Committee of
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alition for International Trade, Corning Glass Works, 1800
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ed by: David Duke, Corning Glass Works).

Kenneth Y. Millian, Vice President, Corporate Administra-
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a 32901 (on behalf of the Semiconductor Industry Associa-
n)

Dr. John H. Makin, Director of Fiscal Policy Studies, Ameri-
n Enterprise Institute, 1150 17th Street, N.W., Suite 700,
ashington, D.C.

At the second hearing on October 2, 1985, the following witnesse testified:

Honorable Frank J. Guarini, U.S. House of Representative 2458 Rayburn House Office Building, Washington, D.C. 2051

Geza Feketekuty, Special Counsel to the Trade Representa tive, Office of the Trade Representative, 600 17th Street, N.W Washington, D.C. 20506

Fred Bergsten, Director, Institute for International Econom ics, 11 DuPont Circle, Suite 600, Washington, D.C. 20036.

Richard Brennan, Executive Director, Coalition for Interna tional Trade Equity (CITE), 1625 I Street, N.W., Suite 70 Washington, D.C. 22306.

Jim H. Conner, Chairman, Trade Reform Action Coalitior Box 99, Gastonia, North Carolina 28053

Jack Sheehan, Legislative Director and Assistant to th President, United Steel Workers of America, 815 16th Stree N.W., Washington, D.C. 20006.

COMMITTEE CONSIDERATION

On November 19, 1985, Committee Chairman John D. Dinge along with Ranking Minority Member James T. Broyhill, Subcom mittee Chairman James J. Florio, and Ranking Minority Subcom mittee Member Norman Lent, introduced a new bill (H.R. 377 which incorporated provisions of H.R. 1950 and provisions recom mended by the Subcommittee on Oversight and Investigations. Th bill was referred to the Committee, and on November 20, 1985, th Subcommittee on Commerce, Transportation and Tourism met i open markup, and with a quorum being present, reported the bi H.R. 3777 favorably, and without amendment, by voice vote. O November 21, 1985, the Committee met in open session and ordere reported the bill H.R. 3777 with amendment by a recorded vote 37 to 3, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the Hous of Representatives, the Subcommittee held oversight hearings an made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of Rule XI of the Rules of the Hous of Representatives, no oversight findings have been submitted the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of th House of Representatives, the Committee believes that the cost i curred in carrying out H.R. 3777 would be $2 million.

Congressional Budget Office Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, January 30, 1986.

Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3777, the Trade Law Modernization Act, as ordered reported by the House Committee on Energy and Commerce, November 21, 1985.

The bill would amend current trade law to reorganize and add to the responsibilities of several federal agencies responsible for trade issues. The bill would require the Department of Commerce and the Department of Treasury to conduct new analyses, prepare several reports, and identify customs law offenders. The estimated additional cost of these requirements is about $2 million. The bill would also transfer some responsibility for decision-making and determining trade actions from the President to the United States Trade Representative (USTR). This transfer is not expected to result in significant additional costs.

The bill would also establish a fund for the deposit of certain customs duties and authorizes the Secretary of Commerce and the Secretary of Labor to spend those funds, as provided for in advance in appropriations acts, to provide assistance to those who are adversely affected by foreign trade practices. The amount of expenditures from this fund, however, are uncertain because we cannot estimate the amount of duties that would be deposited into the fund.

In addition, the bill authorizes the USTR and the Secretary of Treasury to take certain actions, such as imposing duties in some instances, that further the trade policies of the United States. Because there is no way to predict what measures would be taken, CBO cannot estimate the revenue effect of this bill.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner, *Director.*

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The Committee believes that the bill will improve the competitiveness of American firms and workers, thereby creating jobs and reducing interest rates, so that Federal expenditures for unemployment, adjustment assistance, and debt payments also will be reduced As a result, the Committee believes that H.R. 3777 will provide for more stable long-term economic growth with a low rate of inflation.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section provides that this Act may be cited as the "Trade Law Modernization Act".

Section 2—Table of contents

This section contains the table of contents of the bill.

Section 3—Statement of purpose

This section sets forth the purpose of the bill.

Section 4—Definitions

This section contains the definitions of terms used in the bill.

TITLE I: NATIONAL TRADE POLICY AND NEGOTIATING OBJECTIVES

Section 101—Declaration of national trade policy objectives

This section sets forth national trade policy objectives for the United States. A strong performance in international trade is stated to be necessary to support the nation's defense and its overseas strategic commitments, to contribute to increased productivity which will enhance the nation's standard of living, to promote domestic employment, to raise the standard of living in developing countries, to support growth of the world economy, and to strengthen ties between the United States and its major trading partners.

To achieve these objectives, the Congress finds that U.S. trade policy should open world markets on the basis of reciprocity; enforce U.S. unfair trade practice laws to prevent harm to U.S. firms and workers; provide a consistent policy of support to American exports, including minimization of the degree of export restrictions and maximization of export financial support to offset the support provided by foreign governments to their exporters; seek to negotiate international rules over export financing and loans to industries in global overcapacity; promote policies enhancing United States' international competitiveness; prevent foreign government actions which cause injury to other countries by artificially expanding exports; and assist domestic firms and workers in industries facing serious trade problems.

This section also provides that within one year after the date of enactment of this Act, the Secretary of Commerce shall submit to the Congress a report on bilateral trade issues between the United States and Mexico which shall identify and analyze the tariff and non-tariff barriers that inhibit trade between the United States and Mexico and recommend actions that the United States and Mexico may take to eliminate such barriers.

Section 102—Procedure for establishing trade agenda

This section establishes a procedure for an annual congressional review of the Administering Authority's proposal to accomplish the goals provided for in Section 101 of this Act. The Administering Authority will consult with the appropriate industry sector advisory committees prior to making its proposal. The appropriate committees of Congress will hold annual hearings for interested members of the public to present their views on the objectives, goals and priorities of U.S. trade policy. The committees will consult with the Administering Authority concerning the information presented. After the hearings, the committees shall by formal vote accept, reject or modify the Administering Authority's proposal and submit formal advice on this matter in writing to the Administering Authority.

This section also requires the Secretary of Commerce to report to Congress within 30 days of enactment on the status of market oriented sector specific negotiations with Japan. It also requires similar reports within 30 days of the conclusion of any such negotiations. If the Secretary is unable to report substantial and satisfactory progress in any such negotiations, the Administering Authority is required to take appropriate action under Title III of the Trade Act of 1974.

Section 103—Negotiating objectives

This section establishes negotiating objectives for the United States. Such objectives include obtaining greater access abroad for U.S. exports; reducing and eliminating unfair trade practices; improving the effectiveness of international trade rules; limiting the injurious economic effects of foreign government actions to artificially expand exports; enhancing the export competitiveness of specific enterprises; expanding the General Agreement on Tariffs and Trade (GATT) Government Procurement Code to cover opportunities for competitive U.S. products in sectors now excluded by foreign governments; providing common standards and procedures for safeguard actions; utilizing the GATT system to curb the export credit race; renegotiating the Subsidies Code concerning developing country accession to the Code; regulating the expanding use of counter-trade requirements in international trade; and promoting international cooperation in trade and monetary policies in order to facilitate balanced growth in world trade, promote exchange rate stability, and seek a solution to the debt repayment problems of developing countries.

Section 104—Transfer of authority under certain trade laws

This section amends Section 406 of the Trade Act of 1974, Title V of the Trade Act of 1974 and Section 337 of the Tariff Act of 1930 to give the Administering Authority increased power to act independently of the President. Section 4 defines the term "Administering Authority" to mean the U.S. Trade Representative (USTR) or ny officer of the United States to whom the responsibility for carying out the duties of the Administering Authority under this Act re transferred by law.

Section 406 of the 1974 Trade Act deals with actions the President can take to offset market disruption caused by imports from ommunist countries. This provision transfers the authority from he President to the Administering Authority.

Title V of the Trade Act of 1974 deals with the administration of he Generalized Schedule of Preferences (GSP) program by the resident. This section transfers authority for running the GSP rogram to the Administering Authority.

Section 337 of the Tariff Act of 1930 deals with actions the President can take to protect domestic industries from infringement of patents and copyrights by imports. Again, this provision transfers that authority to the Administering Authority.

By transferring authority to the Administering Authority, it is expected that these international trade decisions will be based on questions of fact and law and not on the basis of either domestic political expediency or in response to international diplomatic pressure. For example, under Section 337, questions of copyright or patent infringement are essentially technical questions of fact. Likewise, in Title V of the Trade Act of 1974, Congress has set forth the conditions under which goods may enter the United States duty free under the GSP program. Further, the law provides that in considering whether or not the products from any beneficiary developing country shall continue to receive duty-free treatment under GSP after January 1, 1987, "great weight" must be given to "the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights." It will be easier for the Administering Authority, presently the USTR, to apply the statutory standard and to give "great weight" to the protection of American intellectual property rights and the other conditions set forth in the law in GSP deliberations, than for the President who has extra-legal considerations to weigh in making any final determination to terminate a program very favorable to a foreign country. Further, the Administering Authority is more likely to achieve the desired change in intellectual property law and policy in countries wishing to perpetuate their GSP privileges if there is not an appeal to the President provided for in law.

Section 105—Balance of payments authority

Subsection (a) of this section includes the finding that under current exchange rate arrangements the dollar has remained significantly overvalued relative to the current account balance for a sustained period of time. Further, the Congress finds that appropriate exchange rate values are necessary if the trade laws of the United States are to function effectively.

The section amends Section 122 of the Trade Act of 1974, which provides authority to the President to take temporary measures to correct an international balance-of-payments disequilibrium. The section raises the maximum temporary import surcharge from 15 percent to 25 percent. The time limit for such action is also lengthened from five months to two years, renewable through the normal legislative process. Neither change is intended to require any Presidential action, but to increase the options for action available to the President. This section defines the terms "balance of payments" as payments for current transactions, and "balance-of-payments disequilibrium" as a current account imbalance (measured on an annual basis) that has exceeded one percent of the GNP for more than 18 months in either deficit or surplus.

This section also directs the President immediately to commence negotiations with the appropriate foreign countries for the purpose

eliminating the harmful effects on U.S. trade of the current bal-
ce-of-payments disequilibrium.

This section also prohibits the President from initiating bilateral
multilateral negotiations as part of a new GATT "round" until
commences negotiations concerning the balance-of-payments
oblem. The President is also precluded from concluding any bilat-
al or multilateral trade agreement as part of new GATT negotia-
ns before the first anniversary of the date on which the balance-
payments negotiations are commenced.

The purpose of these prohibitions is to assure that balance-of-
yments problems receive emphasis in multilateral negotiations
nmensurate with their contribution to international economic
tortion. Therefore, it is intended that a new "round" of overall
TT negotiations designed to achieve mutual tariff and non-tariff
luctions be secondary to discussions aimed at correcting the
rmful effects on the United States trade of balance-of-payments
equilibrium. The legislation contains no restrictions on new or
going negotiations outside a new GATT "round."

'his section also requires the Secretary of Treasury, within 30
s of the date of enactment of this Act, to notify Congress of the
essary corrections to the balance-of-payments disequilibrium
t must be implemented to restore equilibrium in the current ac-
nt of the United States by 1990.

TITLE II: FOREIGN COMMERCE COMPETITIVENESS ENHANCEMENT

tion 201—Foreign Commerce Development Program

his section amends the Department of Commerce Organic Act
equire the Secretary of Commerce, using existing personnel, to
blish in the Department of Commerce the Foreign Commerce
elopment Program, which shall analyze the effect on interstate
foreign commerce of Federal, State and local regulation of for-
and U.S. industries; evaluate and propose responses to trade
riers; compile a comprehensive inventory of unfair foreign trade
ctices and the goods, services, or investments affected by those
ctices; and identify and analyze industrial targeting programs of
ign governments and their effect on the competitiveness of U.S.
istries.

his section requires the Secretary, on the basis of the informa-
he collects, to formulate strategies designed to increase the
petitiveness of U.S. industries in interstate and foreign com-
ce.

ie Secretary of Commerce is required to submit a report on an
ual basis, commencing with 1986, to the Committee on Energy
Commerce of the House of Representatives, to the Committee
ommerce, Science and Transportation of the Senate and to the
ident containing a summary of analyses and studies per-
ied; and description of the strategies and policies developed; as-
nents of the effects of foreign industrial and trade policies on
ific U.S. industries; and an identification and description of
d market trends in international trade.

ie Secretary is directed in the Foreign Commerce Development
ram to give highest priority to those foreign countries and
uct sectors in which the United States has significant econom-

ic and commerical interests. The Secretary is directed to co
with such representatives of industry, labor, consumers and
academic community as he deems necessary to carry out the p
sions of this section.

Section 202—Discriminatory foreign procurement practices and ulatory requirements

This section amends the Department of Commerce Organic
to establish a procedure by which the Secretary may deter
whether procurement practices and regulatory requirement
other countries deny U.S. producers fair and equitable marke
portunities.

Under this procedure, any interested party may file a petitio
questing the Secretary to determine whether any foreign gov
ment is engaging in any discriminatory procurement practic
imposing a discriminatory regulatory requirement and whe
that practice or requirement is having a harmful effect on
trade. If the Secretary's determination is affirmative, then the
eign procurement practice or regulatory requirement shall
treated as being an unfair foreign trade practice under Section
of the Trade Act of 1974. By using the term "shall be treate
being", the Committee intends that an affirmative determina
by the Secretary would trigger one or more remedies by the U
provided for in Section 301(b) with respect to the practices in q
tion. The remedies chosen to respond to these practices shoul
those which the Administering Authority, exercising the discre
granted under Section 301(b), determines are most appropriat
obtain the elimination or offset the harmful effects of the discr
natory practices in question.

Section 203—Establishment of sectoral research and monitoring pability

This section amends the Department of Commerce Organic
to require that the Secretary of Commerce establish a progra
assess and evaluate industrial and trade plans of other count
and their effect on U.S. industry, trade and employment. The
retary is also required to provide sufficient information to
courts and other agencies to ensure the consideration of the tr
effects of pending judicial and administrative decisions, to con
with foreign governments to assure that foreign conditions
access in markets affected by such decisions are equivalent to th
in the United States, and to report to Congress on those consu
tions.

The Secretary is also required to convene industry sector adv
ry panels to assess actual and potential dislocations, challenges
opportunities for specified U.S. industries and formulate spec
recommendations to encourage modernization and improve the
dustry's ability to compete. The work of the panels under this
tion is exempt from the antitrust laws.

Section 204—Industry assessment and competitiveness strategy

This section amends the Department of Commerce Organic
to give firms and workers representing a significant portion of
industry, which is the subject of an investigation under Sect

201(a) of the Trade Act of 1974, the right to require the establishment of an ad hoc industry advisory group to prepare an assessment of current problems and a strategy to enhance competitiveness for the industry. The assessment and strategy are to set forth objectives and specific steps which workers and firms could usefully undertake to improve the industry's ability to compete or to assist the industry to adjust to new methods of competition. The advisory group is to include in its report a determination of the ability of producers in the industry to generate adequate capital to finance the modernization of plant and equipment, or to otherwise enhance competitiveness, including an estimate of the overall capital requirements of the industry. Copies of the assessment and strategy are to be submitted to the International Trade Commission (ITC), the USTR, the Secretary of Labor and the Secretary of Commerce. The membership of each advisory group is to include appointees of the Secretary of Commerce who are representatives of workers and the industry, and officials of the Departments of Commerce and Labor and the Office of the USTR. Each advisory group is to be co-chaired by the Secretary of Commerce and the USTR.

By making the Secretary of Commerce and the USTR co-chairpersons of the advisory group, it is the Committee's intention that the Secretary of Commerce would be primarily responsible for overseeing the development of an assessment of competitive problems and strategy to enhance competitiveness for the domestic industry while the USTR would be primarily responsible for overseeing the development of the appropriate import relief that would be required to implement the assessment and strategy.

After the assessment and strategy are completed, the Secretary of Commerce shall seek to obtain, on a confidential basis, information from individual members of the advisory group concerning how they intend to act upon the recommended objectives and actions in the assessment and strategy, or other actions they intend to take to enhance competitiveness. Such information will be shared, on a confidential basis, with the ITC, the Secretary of Labor and the USTR.

Failure to prepare an assessment and strategy for the industry may not be considered a factor in making any determination under Title II of the Trade Act of 1974. The ITC, the USTR, the Secretary of Labor, and the Secretary of Commerce are, however, required to take account of such assessment and strategy, if prepared, in making any determination or taking any action under Title II of the Trade Act of 1974.

The ITC is also to consider, as a factor in evaluating threat of injury, the inability of producers in the industry to generate adequate capital to finance plant and equipment modernization or enhance competitiveness, as provided in the assessment and strategy.

This section requires the Administering Authority, in determining what, if any, relief to provide an injured industry, to evaluate the assessment and strategy and take account of the probable effectiveness of import relief as a means to improve competitive abilities. The Secretaries of Labor and Commerce are also required to take account of the assessment and strategy in developing their advice.

This section also provides that when import relief is grante
an assessment and strategy for the industry have been pre
the Administering Authority is entitled to rely upon the a
outlined in the assessment and strategy and individual confid
submissions, as one basis for granting relief. The Adminis
Authority is also to establish a review committee, compri
itself and the Secretaries of Commerce and Labor, to moni
tions taken to improve the competitive position of the indust
cluding actions described in the individual confidential s
sions. If, after consultation with the advisory group, the
committee considers that recommended actions and objecti
the assessment and strategy, or intended actions described in
dential submissions are not being implemented, or are being
isfactorily implemented, and that the failure to implement t
not justified by changed circumstances and has adversely a
the overall implementation of the objectives in the assessme
strategy, then it must so notify the Administering Authorit
Administering Authority will then ask the ITC to report und
tion 203(i)(2) of the Trade Act of 1974 on the effects of re
relief. After receiving the ITC report, the Administering Au
will immediately consider whether import relief to the in
should be terminated or modified.

TITLE III: FAIR COMPETITION IN FOREIGN COMMERCE

Section 301—Scofflaw penalties for repeated unfair foreign practices

This section directs the Secretary of Commerce by order
hibit any person who is a multiple customs law offender fr
troducing, or attempting to introduce, foreign goods or servic
the commerce of the United States and engaging, or attemp
engage, any other person for the purpose of introducing, on
of the multiple customs law offender, foreign goods or servic
U.S. commerce. The Secretary shall notify the Secretary
Treasury when qualifying violations have occurred, and the
tary of the Treasury shall prohibit the customs entry of an
or services by the violating person. Such a prohibition by the
tary shall apply during the period which begins on the 60
after the date on which the order is issued and ends on th
anniversary of that 60th day. Violation of the Secretary'
may result in the imposition of a fine of not more than $
imprisonment for not more than 10 years, or both. A multi
toms law offender is defined as a person who has been conv
or assessed a civil penalty for three separate violations of
more customs laws during any 10-year period beginning a
cember 31, 1979. If the violator is a corporate person, the
tion would apply to the officers, principals, employees and
of the corporation. The bill defines the term "customs law"
to include civil and criminal statutes that govern the intro
or attempted introduction of foreign goods or services into
States commerce.

It is intended that this section shall apply to both expo
goods to the United States and importers of goods into the
States. For example, if a foreign corporation, with or with

use of an American subsidiary, conspires with a United States firm to enter goods into the United States by means of a false declaration to conceal their true value, country of origin, physical condition, etc., both the foreign firm and its domestic cosponspirator are at risk if such an entry is found to be in violation of the criminal or civil statutes cited in this section. In cases of multiple criminal counts, the Committee intends that a conviction on each count shall be considered a separate violation for the purposes of this section. However, if the violation involves only one customs entry, then the Committee indends that it should be considered only one violation for the purposes of this section even though the entry may technically violate several customs laws.

Furthermore, this section is not intended to apply to civil violations involving clerical errors or inadvertent misstatements of fact unless they are part of a pattern of negligent conduct. The exception language of this section is the same as that provided in 19 USC 1592(a)(2) for inadvertent errors.

Each Federal agency shall notify the Secretary of the customs laws under the jurisdiction of that agency.

Section 302—Use of certain penalty fees for commerce development and adjustment

This section creates in the Treasury of the United States a fund called the Commerce Development and Adjustment Fund. The fund shall consist of deposits of all countervailing duties and antidumping duties collected under Title VII of the Tariff Act of 1930 and all additional duties collected pursuant to actions taken under Titles II and III of the Trade Act of 1974.

The purpose of the fund shall be to provide assistance to firms, communities and workers affected by import penetration. The fund is to be administered by the Secretary of Commerce for firms and community assistance and by the Secretary of Labor for worker assistance. The Committee is aware of problems involving the effectiveness of current adjustment assistance programs and intends that in expending these funds care shall be taken to direct assistance to programs that educate workers in new and useful skills, identify new job opportunities, include worker participation, and take into account the impact of import-related problems on communities as well as firms and workers in those communities.

TITLE IV: RELIEF FROM INJURIOUS INDUSTRIAL TARGETING AND UNFAIR TRADE PRACTICES

Section 401—Enforcement of U.S. rights under trade agreements and response to injurious industrial targeting and other foreign trade practices

This section amends Section 301 of the Trade Act of 1974 in a number of ways as described below. It transfers all Section 301 authority from the President to the Administering Authority. The transfer of authority is intended to ensure that international trade decisions taken under this Title are made on the basis of fact and law and not on the basis of either domestic political expediency or in response to international diplomatic pressure. The transfer of authority is also intended to increase the effectiveness of the U.S.

Trade Representative, permitting more successful ne tions to actions taken under this Title.

This section also amends Paragraph (1) of Section Trade Act of 1974 to make explicit the authority of th ing Authority to take appropriate action to respond policy or practice of a foreign country or instrument cumvents or facilities the circumvention of any trade which the United States is a party." This change is s tended to encourage the Administering Authority to 301 action to end the practice of transshipment throug tries of goods whose entry into the United States is su titative restraint, usually as a result of a bilateral trad This addition provides specific authority to initiate a the third country which facilitates the transshipme the country which had initially agreed to limit its im United States. The most important cases involve stee imports. It is intended that the Administering Auth this section not only to acquire the active cooperati governments in interdicting fraudulent entries of res into U.S. commerce but also to terminate the complic governments in schemes designed to evade such trade

For example, the Governments of Panama and Co planning to permit the construction of otherwise une finishing facilities in their countries to "transform" that would otherwise violate voluntary restraint ag tween the United States and Brazil and Korea, resp intended that the Administering Authority would em 301 to discourage countries such as Panama and Cos participating in such schemes to circumvent U.S. ments.

The Committee also intends that the interests of States in implementation of a trade agreement establi tative restraints such as those negotiated under th 1984 steel program include not only enforcement of levels, but also the manner in which the foreign coun of countries party to the agreement allocates licenses the United States of products subject to the agreeme tion covers acts, policies and practices which are inco any understanding concerning such allocation that is an agreement. Under this section, the Administering A the ability to direct the Customs Service to allow entr in such quantities as to give effect to the terms of an derstanding.

Under current law, the President is authorized to propriate and feasible action within his power" to re eign unfair trade practices. In addition, it is specified suspend benefits of trade agreement concessions and i or other import restrictions. Under this section, the the Administering Authority to respond to burden policies does not include the right to take all appropri ble action. However, in addition to suspension of trad benefits and imposition of duties or import restriction grants to the Administering Authority authority agreements with foreign countries to fully offset bur commerce through the elimination of the practice or other undertakings, to submit to the President proposed actions and implementing legislation, if necessary, and to recommend actions to the President to modify or deny service sector access authorization.

This section also requires the Administering Authority to consult with representatives from industry and labor prior to reaching any determination and requires that confidential information submitted during a Section 301 investigation to be available for disclosure. However, such information may be disclosed only under an administrative protective order.

This section authorizes the Administering Authority to act in response to injurious industrial targeting, defined as any combination of coordinated government actions, whether carried out severally or jointly which: (a) are bestowed on a specific enterprise, industry or group thereof; (b) assist such enterprise, industry or group to become more competitive in the export of any class or kind of merchandise; and (c) cause, or threaten to cause, material injury.

Among the targeting practices intended to be covered by this section are:

(1) Protection of the home market in order to enhance export competitiveness;

(2) Promotion or tolerance of cartels oriented to export markets;

(3) Special restrictions on technology transfer imposed for reasons of developing export capability;

(4) Discriminatory government procurement or other governmental actions that limit foreign competition in a special sector or on behalf of a specific beneficiary and thereby promote export competitiveness of domestic firms;

(5) The use of export performance requirements that limit foreign competition in a specific sector or a specific industry and thereby promote export competitiveness; or

(6) Subsidization as defined in section 771(5) of the Tariff Act of 1930.

This list is not intended to be an exclusive enumeration of targeting practices. It is merely illustrative of the types of practices employed to capture unfairly market share from U.S. firms operating in the marketplace without the benefit of concerted government action.

In addressing problems of industrial targeting, the Administering Authority should consider the totality of acts, policies or practices of a foreign country or instrumentality which may constitute targeting.

To deal adequately with the effects of targeting, it is necessary expressly to include among the available responses the ability to negotiate agreements with foreign governments to fully offset the adverse effects of industrial targeting.

This section also amends Section 301(e) of the Trade Act of 1974 to expand the scope of the term "unreasonable" as it applies to trade policies, acts, or practices to include unfair and inequitable natural resource pricing. Pursuant to the amendment, the Administering Authority may in its discretion respond to such pricing in any of a variety of ways. By providing remedies to unfair foreign trade practices involving natural resource pricing under Section

301 of the Trade Act of 1974, the Committee recognizes the complexity of sovereignty issues involved in such pricing and intends the Administering Authority to have maximum flexibility in applying the law.

This section establishes two general situations in which natural resource pricing may be considered unreasonable. The first exists when three criteria are satisfied: (1) the input product is provided by a government controlled or regulated entity in the exporting country at a domestic price that is lower than the input product's "fair market value"; (2) the input product is not freely available to United States' producers for export or the equivalent thereof; and (3) the price of the input product would, if sold at fair market value, constitute a significant portion of the cost of production of the downstream merchandise for which it is used.

The definition of fair market value, for the purposes of the natural resource pricing provisions of this section only, is discussed in detail below. The inclusion of the phrase "or the equivalent thereof" in discussing the second requirement, listed above, of restrictions on access to the resource takes into account the fact that there may be various ways in which the availability of the resource for export may be restricted or permitted. Such availability may be provided through the exchange of the natural resource for another product or commodity, or the exchange of natural resource-based products between the exporting nation and the United States. By contrast, such availability can be limited, for example, through the sale of the resource to United States purchasers at prices above the exporting country's domestic price, or through unreasonably stringent, governmentally imposed restrictions on the quantity of the resource that may be purchased for export to the United States. The use of the phrase "for export" is not intended to serve as a limitation on the previous phrase "freely available to United States producers" in situations where commercial considerations prohibit the export of the resource to the United States (discussed more fully below) or where natural resource-based downstream products are exchanged. In the latter situation, the "equivalent" of purchase will be deemed provided, even though the resource itself is not exported. The bill allows the Administering Authority great latitude to determine whether access is sufficient in light of the circumstances in a particular case.

The third limitation regarding the relative importance of the resource input in the finished product ensures that an unfair practice would not be considered to exist in cases where the fair market value of the resource has a less than significant relationship to the adjusted production costs. The Administering Authority is expected to establish what percentage of total costs represents "a significant portion" on a case-by-case basis.

The legislation also includes two provisos defining two district situations in which, regardless of the other factors, no unfair practice may be found. These situations are, first, where the natural resource is not exported from the foreign country because of commercial consideration, or, second, where access, or the equivalent thereof, to the resource for export is not denied to United States producers.

st situation occurs where the natural resource cannot be
from the exporting country to the United States on an
ally rational basis. For example, the Committee under-
at neither Venezuela nor Trinidad and Tobago can export
as on a commercially feasible basis because of the prohibi-
al costs necessary and related commercial considerations.
ases no unfair resource pricing practice could be found,
ple, in connection with Venezuela cement manufactured
ural gas and exported to the United States. The term
n the proviso is meant to clarify that where the present
to export is due solely to commercial causes, the mere ex-
foreign government regulations that purport to limit ex-
ıld be irrelevant, because they are in fact immaterial to
ion not to export. Where commercial considerations are
sole" factor responsible for the limitation on exports and
nt regulations are a contributing factor in the decision
xport the natural resource, then the proviso would not

cond proviso establishes again that no unfair practice can
to exist where United States producers are provided
the natural resource for export. Allowing U.S. purchasers
the input product ensures that any potentially artificial
e to foreign manufacturers is alleviated. For example, be-
nezuela makes its natural gas freely available to U.S. pur-
under the proviso no unfair practice would be deemed to
n the export to the United States of Venezuelan products,
ement, manufactured with natural gas.
eady discussed, access or its equivalent may be provided
various means, even though the resource itself is not ex-
he Administering Authority's decision should be based on
ity of circumstances involved. The phrase "for export" is
ded to limit the proviso's application in this situation. The
ee intends for the purposes of the natural resource pricing
of this section only that foreign government export li-
equirements, if not significantly contributory to an inabil-
port, would not be considered an unfair practice to which
s amended would apply.
air market value" of an input product (for the purposes of
ral resource pricing provision of this section only) is de-
the bill as the price that, in the absence of government
n or control, a willing buyer would pay a willing seller for
luct from the exporting country in an arm's-length trans-
his standard necessarily provides a good deal of discretion
dministering Authority in determining fair market value.
ition, the list of factors provided in the bill is intended to
xhaustive. Thus, the Administering Authority should also
other relevant matters that would influence the determi-
f fair market value. These matters include the grade or
f the resource as found in the exporting country relative
sellers in the marketplace, and the use of the resource in
rting country prior to the development of the capability to
hat resource into the downstream product.
ıg to the listed factors, export prices from the country
ıvestigation may provide some evidence of fair market

pages tightly bound

value. Where there is more than one export price, as may often be true, the Administering Authority should take into account the full range of prices. The same is true with respect to the reasonableness of resource prices in the exporting country. The Administering Authority should determine both the resource's fair market value and whether the government of the exporting country has adopted the practice of providing the resource at preferential rates to some domestic industries over others.

The current market clearing price in other countries, including the United States, if the resource may be transported from the exporting nation to those market assures that where it is commercially or technologically infeasible for the exporting country to transport the resource to a particular market, the prices at which the resource is sold in that market are irrelevant. Where the resource can be transported, its current prices in those markets should be considered.

The price at which the resource is generally available on world markets involves determining whether there is more than one world price. The Administering Authority is to review the full range of prices at which the resource is generally available.

The cost advantage in the production and sale of the natural resource that the exporting country may have in relation to other sellers requires case-by-case evaluation. The availability of abundant supplies of the resource in the exporting nation, lower production costs, and lower transportation costs are all factors. Clearly, a country rich in natural resources may possess an inherent cost advantage. The Committee intends that Section 301 as amended by H.R. 3777 would not apply in cases where the price differential is due to the non-discriminatory production cost-based exercise by the exporting nation of its sovereign authority over the development of its resources.

In evaluating the factor of current market clearing price in countries other than the exporting country, the legislation permits a judgment as to whether those markets are available to the exporing country. One key factor should be whether the exporting nation has not sold in those markets or has sold on such an infrequent basis that it has achieved little in the way of long-term commercial relationships with purchases in that market. In such cases, those prices will be less significant because of the minimal commercial relationship between the exporting country and that market.

The second portion of this provision addresses the issue of below fair market value sales of removal rights. Removal rights require separate treatment because they differ in one major respect from resource input products. The right to remove or extract a natural resource is not a true commodity with a uniform price, and it cannot be exported. The value of a removal right will vary depending on: (1) the value of the underlying resource; and (2) the costs of extracting or removing that resource. There is no world market price or export price for a removal right that can be used as a benchmark.

This section provides three of the factors to be considered by the Administering Authority in determining the fair market value of a removal right and whether that pricing is unfair. These three factors are: (1) the price paid in the exporting country for a comparable removal right not subject to government regulation or control; (2) the price paid in the exporting country for a comparable removal right sold through a process of competitive bidding; and (3) the price paid for a comparable removal right in a comparable region of a country other than the exporting country.

These factors are not exhaustive; other factors will also be relevant. For instance, in the context of removal rights for timber, the acutal value of specific stand of timber may be influenced by many factors including quality, volume per acre, terrain, product demand, distance to and accessibility of markets, season, labor costs, species and average tree size, logging equipment, end product of manufacture, and tax implications.

Any one of the above factors can have a highly significant effect on removal (stumpage) prices for a species in one given area, while the effect may be less significant in another area.

The Committee intends that the Administering Authority should have the discretion to consider these and other similar factors in valuing removal rights under this provision. Moreover, the Committee wishes to make it clear that the overall intent of this section in all cases is to address situations in which input resource or removal right pricing is unfair or inequitable both because it is lower than fair market value, as defined in this provision, and because equal access is denied to U.S. producers.

This section further provides that if the Administering Authority takes any action under Section 301(b) of the Trade Act of 1974, with respect to capital goods, the Secretary of the Treasury, until the Administering Authority determines that the unfair trade practice no longer exists, shall withdraw any Federal subsidy designed to encourage capital goods acquisition which applies to such capital goods of the country or countries involved. Although this section refers to subsidies generally, the Committee is particularly concerned that the investment tax credit not be available to goods which are subject to Section 301 remedies. If the remedy chosen involves action by the President based on recommendations of the Administering Authority, then withdrawal of an acquisition subsidy may be suspended by the President.

Section 402—Investigation under title III of the Trade Act of 1974

This section amends Section 304 of the Trade Act of 1974 to require the Administering Authority to present questionnaires to the foreign governments and enterprises concerned and to verify all information on which it relies in making its final determination.

If a foreign government or enterprise fails to respond to the questionnaire or provides inadequate information, the Administering Authority's determination is to be based on the best information available, including allegations contained in the petition.

The Administering Authority must determine no later than five months after the date on which an investigation is initiated whether the final determination is likely to be affirmative. If this preliminary determination is affirmative, provisional measures may be imposed. It is expected that preliminary determinations will expedite negotiated solutions to trade disputes subject to Section 301 proceedings.

The Administering Authority must make a final determinatio
no later than 11 months after the date of which the investigatio
was initiated. If the determination is affirmative, action take
must occur within 30 days of that decision.

This section also requires the Administering Authority to consul
with appropriate private sector representatives concerning imple
mentation of actions to be taken under Section 301. Should the Ad
ministering Authority, following an affirmative final determina
tion, decide that action by the United States is not appropriate, i
shall report to Congress on its reasons for taking no action and o
the views of the industry representatives.

Section 403—Mandatory action in cases of injurious industrial ta geting

If the Administering Authority finds preliminarily that a foreig
government or instrumentality has engaged in foreign industri
targeting which is a cause of material injury or threat thereof t
an industry as determined preliminarily by the ITC, the Admini
tering Authority is required to take action to prevent further inj
rious effects of the targeting program. Following final determina
tions by the Administering Authority and the ITC, the Administe
ing Authority is to take action to fully offset any injurious effe
and, where necessary, is to submit to the President, who sha
submit to Congress, proposed legislation to implement such action
The legislation will be developed by the Administering Authori
in consultation with an industry advisory group comprised of bu
ness and labor in the injured industry and appropriate federal of
cials.

Following a preliminary determination that an action constitut
injurious industrial targeting, the Administering Authority is
rected to establish an advisory committee composed of indust
representatives of firms and workers in the industry and Feder
officials and, with that committee, to formulate proposals to resto
the competitive position of the domestic industry involved.

This section directs the ITC to reach preliminary and final dete
minations of whether a U.S. industry is materially injured
threatened with material injury, or the establishment or growth
a U.S. industry is materially retarded, by reason of sales or like
sales of the merchandise under investigation that are affected
industrial targeting.

In making the determination of material injury, the ITC is
consider, among other factors, actual and potential negative effe
on employment, sales, production, market shares, ability to ra
capital, inventories, investment, cash flow and growth of U.S.
dustries, as well as the displacement of U.S. exports in third-co
try markets.

In making the determination of threat of matrial injury
reason of injurious foreign industrial targeting, the ITC is to c
sider, among other factors, increases the production capacity
countries under investigation likely to result in increased expo
from such country, rapid increase in and effects of U.S. import p
etration, and the probability that prices of imports into the Uni
States will depress domestic prices, or that prices of goods enter
third markets will displace U.S. exports.

This section also permits the Administering Authority in cases involving injurious industrial targeting to accept an agreement by the foreign government concerned in lieu of the other actions available, such as suspension of trade agreements. The agreement must eliminate the injurious effects on the U.S. industry as far as possible and must be approved by the petitioner.

If the contracting parties to the GATT disapprove an action taken by the United States under Sections 301 or 306, the Administering Authority is given the discretion to modify or terminate the action or to take such action as it determines appropriate to compensate any foreign country or instrumentality that has been adversely affected.

This section also specifies that if dumping or subsidization are uncovered during the investigation, the Administering Authority shall consult with petitioners and representatives of workers and firms in the affected industry as to the advisability of taking appropriate action under U.S. unfair trade practice laws.

Sectio 404—Time limitation on Presidential action regarding imports affecting national security

This section amends Section 232 of the Trade Expansion Act of 1962 to establish a 90-day time limit for the President to respond to resommendations of the Secretary of Commerce concerning the provision of relief from imports that threaten national security. Actions pending before the President on the date this legislation is enacted must be decided within 90 days of that enactment.

Section 405—Protection of intellectual proeprty

This section amends Section 337 of the Tariff Act of 1930 to clarify that the importation of articles into the United States that violates U.S. intellectual property rights shall, in and of itself, be considered sufficient evidence of injury. This section would also eliminate the need to prove that the pertinent U.S. industry is efficiently and effectively operated, and shorten the time limits for action by the ITC from one year, or 18 months in more complicated cases, to 6 months and 9 months, respectively.

The phrase "an industry consisting of the United States operations of the owner of the intellectural property at issue and its licensees, devoted to the lawful exploitation of the rights described" incorporates into the statute the current definition of "domestic industry" contained in the legislative history of the 1974 Trade Act and used by the ITC and the Federal Circuit Court of Appeals in Section 337 cases. Therefore, the Committee does not intend to change the current administrative and judicial interpretation of "domestic industry."

TITLE V: RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Section 501—Investigations under section 201 of Trade Act of 1974

This section amends Chapter 1, Title II, of the Trade Act of 1974, dealing with authority to grant temporary import relief to injured industries following investigations by the ITC. In the past, the decision to grant import relief has rested with the President. This section transfers that authority to the Administering Authority to ensure that decisions on import relief are made on the basis of fact and law and not on the basis of either domestic political expediency or in response to international diplomatic pressure.

This section includes enhancement of an industry's competitivenes as a purpose for which import relief can be sought.

Standing is given to an industry that produces materials, parts, components or subassemblies irrevocably destined for incorporation in an article like or directly competitive with an imported article.

This section replaces the requirement that imports be the "substantial cause" of injury with the requirement that they be "the cause of injury." The term "cause" is defined as a cause which is important, even though another cause or other causes, such as a general economic recession, may be of equal or greater importance.

This section also lists additional factors for the ITC to consider in making a determination of threat of injury. These include: (1) A decline in market share; (2) higher and growing domestic inventories; (3) a downward trend in production, profit, wages or employment; (4) foreign industrial targeting; and (5) the extent to which diversion of exports to the U.S. market occurs because other markets are closed. By requiring the ITC to consider these factors, it is intended that timely cases demonstrating the presence of such factors as these be considered to have adequately proven threat of injury. In such cases, the ITC should act before an industry has experienced irreparable damage, including damage to its ability to attract the capital necessary to modernize or maintain its technological advantages in the face of developing international competition.

The section also provides that imports by domestic producers shall not be considered a factor indicating the absence of serious injury, or threat thereof. If injury is found to exist, the ITC must recommend relief, even if the relief will only assist in remedying the injury. The ITC may also recommend adjustment assistance in addition to increased duties or import restrictions.

Section 502—Provisional relief upon finding of critical circumstances

This section adds a new subsection to section 201 of the Trade Act of 1974, permitting the Administering Authority to impose provisional measures should it find that critical circumstances exist. Critical circumstances are defined as instances where a delay in inhibiting a significant increase in imports which occurred over a short period of time would cause damage difficult to repair. Provisional measures may consist of duty imposition, tariff-rate quotas, quantitative restrictions, orderly marketing agreements or any combination thereof. These measures would remain in force until the President revokes them, the ITC makes a negative determination, or 60 days after the ITC makes an affirmative determination.

In prescribing provisional relief under critical circumstances, the Committee expects the Administering Authority to devise an effective remedy, such as quantitative restrictions, when it becomes apparent that an injurious import surge is taking place. The Committee also expects that the Administering Authority will act on credible evidence of such a surge as soon as such information is received, rather than waiting for verification from census data which

not always sufficiently timely to prevent injury from such
irges.

ection 503—Consultations with foreign governments

This section amends section 201 of the Trade Act of 1974 to pro-
de that when the ITC makes an affirmative recommendation to
e Administering Authority, it shall determine whether the for-
gn government concerned engaged in actions to expand export
arkets or to restrict imports of the article, and whether diversion
exports to the United States has occurred because other markets
e closed. If the ITC determines that either of these conditions has
curred and the Administering Authority decides to impose
iport relief, the Administering Authority must consult and nego-
ite with other producing and consuming countries to seek to es-
olish a multilateral framework for the maintenance and develop-
ent of fair, equitable and nondisruptive patterns of trade. The
lministering Authority should not defer the implementation of
ief under section 201 pending these negotiations.

ction 504—Import relief

This section provides that if the Administering Authority deter-
nes that import relief is appropriate, the Administering Author-
shall consult with petitioners and industry representatives as to
advisability of taking action under the countervailing duty pro-
ions of U.S. trade laws or under Title III of the Trade Act of
4, where there is reasonable cause to believe that such actions
uld be appropriate.

his section further provides that if the Administering Authority
es any action under Title II of the Trade Act of 1974, with re-
ct to capital goods, the Secretary of the Treasury, until the Ad-
nistering Authority determines that the unfair practice no
ger exists, shall withdraw any Federal subsidy designed to en-
rage capital goods acquisition which applies to such capital
ds of the country or countries involved. Although this section
rs to subsidies generally, the Committee is particularly con-
ned that the investment tax credit not be available to goods
ch are subject to Title II remedies.

TITLE VI: COUNTERVAILING AND ANTIDUMPING DUTIES

*ion 601—Limitation on acceptance of country under the agree-
ment*

his section amends Section 701 of the Tariff Act of 1930 by re-
ing that countries "under the Agreement" must commit them-
es under the GATT to eliminate export subsidies; not to extend
subsidies to new merchandise or introduce new export subsi-
and to immediately eliminate export subsidies on merchandise
h the ITC finds is already competitive in the U.S. market and
ld be competitive without such subsidization. The Committee is
re that the latter requirement to eliminate subsidies on com-
ive merchandise seeks to clarify the manner in which the
ed States would apply the standards of Articles 9 and 10 of the
T Subsidies Code. Those Articles are currently unclear as to
lefinition of subsidies on certain "primary" products. This pro-

vision emphasizes the view of the Committee that agreements under the Code should be specific both as to coverage and commitments. Least developed countries, as defined in Section 124 of the Foreign Assistance Act of 1961, are allowed a transitional period of five years to phase out export subsidies, in contrast to higher income developing countries that must eliminate the subsidies within one year.

The Administering Authority is required to review compliance with the commitments once a year. If noncompliance is found, the designation as a country under the Agreement will be withdrawn. If the withdrawal occurred after the ITC has made a negative injury determination or after an order had been revoked, the negative determination or revocation will be voided. The Administering Authority would be required to initiate a countervailing duty investigation under Section 303 of the Tariff Act of 1930 and to order the suspension of liquidation, with respect to any merchandise from such country that has previously been the subject of a final affirmative countervailing duty determination. The suspension of liquidation will be terminated if the Administering Authority's preliminary determination is negative.

Committee intends that countries which sign the GATT Subsidies Code but fail to comply with the Code be denied the privileges which derive therefrom, and, specifically the benefit of the injury test. It is also intended that compliance with the Subsidies Code be carefully reviewed annually (1) to encourage adherence to GATT principles as a basis for the long-term trade policies of signatory nations and (2) to discourage the practice of some nations who have apparently signed the Code merely as a short-term, expedient response to unfair trade cases.

Section 602—Critical circumstances determinations

This section revises the procedural aspects of antidumping and countervailing duty law in four ways:

(1) Instead of requiring a petitioner to allege critical circumstances, the Administering Authority would be required to begin a critical circumstances investigation on the date that it initiates the dumping or subsidies investigation. It would publish a "notice of import surge" whenever it found evidence that imports have increased significantly in response to the filing of the petition.

(2) The ITC would be required to make an affirmative critical circumstances determination if the Administering Authority has made an affirmative critical circumstances determination and if the ITC has made an affirmative material injury determination (not a threat only or retardation of establishment only determination).

(3) The Administering Authority would direct the U.S. Customs Service to suspend liquidation of entries under investigation which were entered on or after 90 days before the date on which the notice of preliminary determination is published in the Federal Register. If no critical circumstances determination is made, Customs would be ordered to liquidate all imports entered before the date of the preliminary determination.

(4) Countries that are not "countries under the Agreement" would be made subject to the critical circumstances provisions of countervailing duty law.

Section 603—Persistent dumping and subsidization

This section amends Sections 703 and 733 of the Tariff Act of 1930 to waive the requirement of a preliminary determination by the ITC in any instance where the Administering Authority determines that during the year preceding the filing of a petition the ITC had made a preliminary or final affirmative determination with respect to the same product. This section, therefore, dispenses with the requirement of a preliminary determination in those instances where successive petitions are filed to deal with imports of the same product from many different countries. In addition, it provides for the waiver of preliminary injury determinations in such instances, without regard to whether the preceding injury determination was made under the antidumping or countervailing duty laws with respect to investigations of that product.

Section 604—Suspensions of investigations

This section amends Section 704(b) of the Tariff Act of 1930 to prevent the Administering Authority from suspending a countervailing duty investigation based on a promise by a foreign government to apply an export tax equal to the determined net subsidy (otherwise known as an "offsetting" export tax), thus eliminating the export tax as a basis for suspending a countervailing duty investigation.

Section 605—Limited application of 90-day review authority

This section amends Section 736(c) of the Tariff Act of 1930 by adding three new criteria for the institution of expedited reviews of antidumping orders, by allowing for written comments by interested parties before the decision is made to conduct such a review. The additional criteria include: (1) normal antidumping time schedules; (2) evidence of a significant anticipated margin differential; and (3) representative sales as the basis for review.

Section 606—Drawbacks; other duties

This section amends Section 779 of the Tariff Act of 1930 to make it clear that rebates (or drawbacks) for duties paid on imported products that are subsequently exported shall not apply to antidumping and countervailing duties.

This section also amends Section 304 of the Tariff Act of 1930 to permit no exception to the country-of-origin labeling requirements for certain imported handicraft articles.

Section 607—Threat of injury

This section amends Section 771(7)(f) of the Tariff Act of 1930 to add two additional items that the ITC must consider when determining whether a threat of injury exists. The ITC is directed to determine if trade in the article or articles under investigation has been the subject of foreign government targeting which could be found to be a form of subsidy or is subject to import restrictions in other countries.

Section 608—Industry and labor associations producing com
parts treated as interested parties

This section amends Section 771(a) of the Tariff Act of
define "interested party" to permit participation in antid
and countervailing duty proceedings by those associated w
production of major parts and components intended to be i
rated into the imported article.

Section 609—Special provisions relating to governmental di
of trade in certain dumping cases

This section amends Section 771 of the Tariff Act of
permit the Administering Authority to waive the requireme
merchandise which is subject to investigation be produced
same person if the foreign government involved has fol
practice of allocating contracts for the purchase of the merc
among users in that country.

This section also states that in the ascertainment of
market value no pretended sale or offer for sale shall be ta
account, and prices under long-term contracts or agreeme
be taken into account when such contracts or agreements
quired by the government. This provision is discretionary.
ing on market conditions, long-term contracts may not be
criminatory.

Section 610—Diversionary dumping

This section does the following:

(1) It adds to the definitions in Sections 771 of the Tari
1930 the new term "Diversionary Dumping." Under that d
a less than fair value dumping analysis may be applied to
al or component input—to the product under investigatio
is an outstanding antidumping order against the manufa
producer of the input, or if there is a suspension agree
other arrangement affecting the input.

(2) It amends Section 773(a) of the Tariff Act of 1930
that in determining foreign market value an adjustment
for any diversionary dumping.

(3) It amends Section 773(b) of the Tariff Act of 1930
that, in determining sales at less than cost of production,
ment be made for any diversionary dumping.

(4) It amends Section 773(e) of the Tariff Act of 1930
that in determining the constructed value of components
rials an adjustment be made for diversionary dumping.

Section 611—Upstream subsidies

This section amends Section 771(a) of the Tariff Act
enlarge the third-country application of the upstream s
visions to subsidies paid or bestowed under the authorit
toms union or its members.

This section also establishes a new Section 771(b)(3) o
Act of 1930 "special diverison" rule, creating a presumpt
petitive benefit for an input product where a prior subs
or subject to an arrangement that results in increases i
the product under investigation.

Section 612—Foreign market value

This section amends Section 773(b) of the Tariff Act of 1930 to provide that in cases involving industries benefiting from a government promotional progam, the cost of research and development used to determine the cost of producing the product shall be the cost which the individual producer would have incurred had it not been part of the governmental progam.

The section also provides that in cases involving products whose production costs decline as production volume increases, sales would be disregarded as the basis for foreign market value if prices were not sufficient to recover all costs at the actual level of production during the period of investigation, even if prices were sufficient to cover costs over a longer period.

This section also provides that where the Administering Authority determines that imports into the home market of the foreign producer have been restrained, the unit cost of production shall be adjusted to reflect what the level of home market sales would be, absent the import restraint.

Section 613—Disclosure of confidential information

This section amends Section 777 of the Tariff Act of 1930 to make clear that continuing disclosure is to take place pursuant to one application that describes, in general terms, the type of information sought. The initial application may be filed before any information is submitted by any party and may list and request all of the types of information that may be submitted in the case. This application would operate as an ongoing request for release. In addition, this section specifies strict time limits for the release of information under administrative protection orders to ensure that current procedures are improved. With regard to those parties that oppose release, such parties would be required to state at the time the information is submitted both why they oppose release and whether they want to withdraw the information should the Commerce Department decide release is justified. Finally, this section requires disclosure of confidential information submitted under a propertly filed administrative protection order, unless the submitter establishes that disclosure will cause substantial harm to its business operation, and that such harm outweighs the requester's need for the information.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 3777 as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

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[Sec. 305. Requests for information.
[Sec. 306. Administration.]

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TITLE I—NEGOTIATING AND OT
AUTHORITY

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CHAPTER 2—OTHER AUTHORITY

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SEC. 122. BALANCE-OF-PAYMENTS AUTHORITY.

(a) Whenever fundamental international payments p
quire special import measures to restrict imports—
(1) to deal with large and serious United States
payments deficits.
(2) to prevent an imminent and significant dep
the dollar in foreign exchange markets, or
(3) to cooperate with other countries in correctin
national balance-of-payments disequilibrium,
the President shall proclaim, for a period not exceeding
(unless such period is extended by Act of Congress)] *2 y*
(A) a temporary import surcharge, not to excee
percent ad valorem, in the form of duties (in additi
already imposed, if any) on articles imported into
States;
(B) temporary limitations through the use of qu
importation of articles into the United States; or
(C) both a temporary import surcharge described
graph (A) and temporary limitations described
graph (B).
[The authority delegated under subparagraph (B) (and
subparagraph (C) as related to subparagraph (B)) may
(i) only if international trade or monetary agreements
United States is a party permit the imposition of quo
ance-of-payments measure, and (ii) only to the extent
damental imbalance cannot be dealt with effectivel
charge proclaimed pursuant to subparagraph (A) or (C).

rary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.]

* * * * * * *

(i)(1) The period during which a surcharge may be imposed under subsection (a) may be extended for 1-year periods by enactment of separate Acts of Congress.

(2) The President may submit to the Congress bills which provide for a 1-year extension of the period during which a surcharge may be imposed under subsection (a).

(j)(1) Upon the enactment of this subsection, the President shall immediately commence negotiations with the appropriate foreign countries for the purpose of achieving an agreement to eliminate the harmful effects on United States trade of balance of payments disequilibrium.

(2) The President may not—

(A) commence bilateral or multilateral negotiations under the GATT regarding the reduction or elimination of tariffs and nontariff barriers to trade in goods and services until negotiations are commenced under paragraph (1); or

(B) conclude any bilateral or multilateral trade agreement resulting from negotiations under subparagraph (A) before the first anniversary of the date on which negotiations are commenced under the authority of paragraph (1).

(3) The Secretary of the Treasury shall within 30 days after the date of the enactment of this Act determine, and notify the Congress, of the necessary corrections to the balance of payments disequilibrium that must be implemented to restore equilibrium in the current account deficits of the United States by 1990.

(k) For purposes of this section—

(1)(A) The term "balance of payments" refers to payments for current transactions (within the meaning of article 30 of the Articles of Agreement of the International Monetary Fund) which are not for the purpose of transferring capital.

(B) The balance of payments on current account (with imports determined on the basis of the cost-insurance-freight value) as reported by the Secretary of Commerce shall be used to measure payments for current transactions.

(2)(A) The term "balance of payments disequilibrium" means a large and serious current account imbalance (either deficit or surplus) that has persisted for more than 18 months.

(B) A current account imbalance that exceeds 1 percent of the Gross National Product of the United States (as determined by the Secretary of Commerce) shall be treated as a large and serious current account imbalance.

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CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIF BARRIERS AND RESOLUTIONS APPROVING COMMERCIA AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.— * * *

* * * * * * *

(c) INTRODUCTION AND REFERRAL.—

(1) * * *

(2) On the day on which a bilateral commercial agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. [The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.]

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TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—IMPORT RELIEF

SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

(a)(1) A petition for eligibility for import relief for the purpose o facilitating orderly adjustment to import competition may be file with the International Trade Commission (hereinafter in this chap ter referred to as the "Commission") by an entity, including trade association, firm, certified or recognized union, or group o workers, which is representative of an industry. The petition shal include a statement describing the specific purposes for whic import relief is being sought, which may include such objectives a facilitating the orderly transfer of resources to alternative uses o *to enhance competitiveness* and other means of adjustment to ne conditions of competition.

(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the United States Trade Representative and the agencies directly concerned.

(3) Firms and workers representing a significant portion of an industry may request in the petition that an industry advisory group be established under section 16 of the Department of Commerce Organic Act (15 U.S.C. 1501 et seq.) for the purpose of preparing an assessment of current problems of the industry and a strategy to enhance competitiveness for the industry.

(b)(1) Upon the request of the **[**President**]** *Administering Authority* or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a **[**substantial**]** cause of serious injury, or the threat thereof, **[**to the domestic industry producing an article like or directly competitive with the imported article.**]** *to any domestic industry that produces an article like or directly competitive with the imported article or that produces materials, parts, components, or subassemblies which, due to inherent characteristics, are intended to be incorporated in an article like or directly competitive with the imported article.*

(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate *domestic production facilities* at a reasonable level of profit, and significant unemployment or underemployment within the industry;

[(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;**]**

(B) with respect to the threat of serious injury—

(i) a decline in sales or market share in the domestic industry concerned;

(ii) a higher and growing inventory in the domestic industry concerned;

(iii) a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

(iv) any combination of coordinated government actions, whether carried out severally or jointly, that—

(I) are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise, and

(II) causes, or threatens to cause, serious injury to the domestic industry concerned;

(v) the extent to which the United States market i
focal point for diversion of exports of the article conc
by reason of restraints on exports of such article to,
imports of such article into, third country markets; an
(vi) in the case of an industry that has developed a
sessment and strategy under section 16 of the Depar
of Commerce Organic Act, the inability of producers i
domestic industry to generate adequate capital to fi
the modernization of plants and equipment, or to othe
enhance competitiveness, including any associated res
and development, as set forth in such assessment and
egy for enhanced competitiveness; and
(C) with respect to [substantial] cause, an increase i
ports (either actual or relative to domestic production)
decline in the proportion of the domestic market suppli
domestic producers; and
(D) the presence or absence of any factor which the Co
sion is required to evaluate in subparagraphs (A) and (B
not necessarily be dispositive of whether an article is bei
ported into the United States in such increased quantitie
be a [substantial] cause of serious injury or threat of s
injury to the domestic industry.
(3) For purposes of paragraph (1), in determining the domes
dustry producing an article like or directly competitive with
ported article, the Commission—
(A) [may,] *shall,* in the case of a domestic producer
also imports, treat as part of such domestic industry o
domestic production,
(B) may, in the case of a domestic producer which pr
more than one article, treat as part of such domestic in
only that portion or subdivision of the producer whic
duces the like or directly completitive article, and
(C) may, in the case of one or more domestic producer
produce a like or directly competitive article in a maj
graphic area of the United States and whose production
ties in such area for such article constitute a substanti
tion of the domestic industry in the United States and p
ly serve the market in such area, and where the impo
concentrated in such area, treat as such dometic industr
that segment of the production located in such area.
[(4) For purposes of this section, the term "substantial
means a cause which is important and not less than any
cause.]
(4) For purposes of this section, the term "cause" means
which is important. A cause may be important even thoug
causes, such as a general economic recession, are of equal or
importance.
(5) In the course of any proceeding under this subsecti
Commission shall, for the purpose of assisting the [Preside
ministering Authority in making his determinations under
202 and 203, investigate and report on efforts made by fir
workers in the industry to compete more effectively with i
(6) In the course of any proceeding under this subsecti
Commission shall investigate any factors which in its ju

may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(7) For purposes of this section, the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(8) For purposes of this section, imports of like or directly competitive articles by domestic producers in an industry shall not be considered a factor indicating the absence of serious injury, or threat thereof, to such industry.

(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(d)(1) The Commission shall report to the [President] *Administering Authority* its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, [or] *and*

(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively [remedy] *assist in remedying* such injury, recommend the provision of such assistance.

and shall include such findings or recommendations in its report to the [President.] *Administering Authority.* The Commission shall furnish to the [President] *Administering Authority* a transcript of the hearings and any briefs which were submitted in connection with each investigation.

(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the [President,] *Administering Authority,* the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(3) If the Commission makes an affirmative finding or recommendation under this paragraph, the Commission shall also determine (for purposes of section 203(1))—

(A) whether trade in the article concerned has been affected by any combination of coordinated government actions, carried out severally or jointly, that]

(i) are bestowed on a specific enterprise, industry, or group thereof, and

(ii) assist the beneficiary in becoming more competitive in the export of any class or kind of merchandise, and

(B) the extent to which the United States market is the focal point for diversion of exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets.

Such determinations shall be included in the report submitted under paragraph (1).

(4) If an assessment and strategy for the domestic industry is submitted under section 16(c)(1) of the Department of Commerce Organic Act, the Commission shall take into account in developing its recommendations under paragraph (1) the objectives and actions, including the nature and extent of import relief, specified in such assessment and strategy.

(g)(1) If, during the course of an investigation initiated under this title, the Administering Authority finds that critical circumstances exist, the Administering Authority shall impose provisional measures consisting of any actions authorized under section 203(a). Such provisional measures shall remain in effect until the later of—

(A) the date on which the measures are revoked by the President,

(B) the date on which the Commission makes a negative determination under subsection (b)(1), or

(C) the date that is 60 days after the date on which the Commission makes an affirmative determination under subsection (b)(1).

(2) For purposes of this subsection, critical circumstances exist if a significant increase in imports (absolutely or relatively) over a short period of time has led to circumstances in which a delay in the imposition of relief would cause damage that would be difficult to repair.

(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the [President] *Administering Authority* of the results of such previous investigation.

(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of enactment shall be continued under this section in the same manner as if the investigation had been instituted originall under the provisions of this section. For purposes of subsectio (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request o resolution as having been received or the motion having bee adopted, as the case may be, on the date of the enactment of thi Act.

(2) If, on the date of the enactment of this Act, the [President] *Administering Authority* has not taken any action with respect t any report of the Commission containing an affirmative determina tion resulting from an investigation under section 301(b) of th Trade Expansion Act of 1962 (as in effect before the date of the en actment of this Act), such report shall be treated by the [Pres

dent] *Administering Authority* as a report received by him under this section on the date of the enactment of this Act.

SEC. 202. [PRESIDENTIAL] ACTION *BY THE ADMINISTERING AUTHORITY* AFTER INVESTIGATIONS.

(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the [President] Administering Authority—

(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, [and]

(B) shall, if an assessment and strategy has been prepared under section 16 of the Department of Commerce Organic Act, evaluate any objectives and actions specified in such assessment and strategy, and

[(B)] *(C)* shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

(b) Within 60 days (30 days in the case of a supplemental report nder subsection (d)) after receiving a report from the Commission ontaining an affirmative finding under section 201(b) (or a finding nder section 201(b) which he considers to be an affirmative find- g, by reason of section 330(d) of the Tariff Act of 1930, within ch 60-day (or 30-day) period), the [President] *Administering Au- ority* shall—

(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

In determining whether to provide import relief and what hod and amount of import relief he will provide pursuant to on 203, the [President] *Administering Authority* shall take account, in addition to such other considerations as he may relevant—

(1) information and advice from the Secretary of Labor on he extent to which workers in the industry have applied for,

are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

[(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;]

(3) the probable effectiveness of import relief as a means of promoting adjustment or modernization in order to improve competitive abilities, the efforts being made or to be implemented by the industry concerned (including actions specified in the assessment and strategy prepared under section 16 of the Department of Commerce Organic Act) to adjust to import competition, and other considerations relative to the position of the industry in the United States economy;

(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(5) the effect of import relief on the international economic interests of the United States;

(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(7) the geographic concentration of imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or in imports of such article into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) The [President] *Administering Authority* may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the [President's] *Administering Authority's* request, furnish additional information with respect to such industry in a supplemental report.

SEC. 203. IMPORT RELIEF.

(a) If the [President] *Administering Authority* determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

(2) proclaim a tariff-rate quota on such article:

(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; [or]

(5) consult with petitioners and representatives of workers and firms in the affected industry as to the advisability and desirability of taking appropriate action under section 303 or title VII of the Tariff Act of 1930, or title III of this Act, if, pursuant to any investigation under this title, the Administering Authority has reasons to believe that any foreign government or firm is engaged in any action or practice for which relief is available under such section or title; or

[(5)] *(6)* take any combination of such actions.

(b)(1) On the day the [President] *Administering Authority* determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the [President] *Administering Authority* shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the [President] *Administering Authority* differs from the action recommended to him by the Commission under section 201(d)(1)(A), he shall state the reason for such difference.

(2) On the day on which the [President] *Administering Authority* determines that the provision of import relief is not in the national economic interest of the United States, the [President] *Administering Authority* shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

(3) On the day on which the [President] *Administering Authority* proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(c)(1) If the [President] *Administering Authority* reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(d)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon nactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b) is transmitted to the Congress.

(2) If the contingency set forth in paragraph (1) occurs, the President] *Administering Authority* shall (within 30 days after

the enactment of the joint resolution referred to in paragraph (1) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(d).

(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity of value of such article imported into the United States during the most recent period which the **[**President**]** *Administering Authority* determines is representative of imports of such article.

(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless the **[**President**]** *Administering Authority* announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

(2) If the **[**President**]** *Administering Authority* provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

(3) If the **[**President**]** *Administering Authority* negotiates an orderly marketing agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a).

(4) For purposes of this subsection, the term "import relief determination date" means the date of the **[**President's**]** *Administering Authority's* determination under section 202(b).

(f)(1) For purposes of subsections (a) and (c), the suspension o item 806.30 or 807.00 of the Tariff Schedules of the United State with respect to an article shall be treated as an increase in duty.

(2) For purposes of subsections (a) and (c), the suspension of th designation of any article as an eligible article for purposes of titl V shall be treated as an increase in duty.

(3) No proclamation providing for a suspension referred to i paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making a affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantiall caused by imports to the domestic industry producing a like or d rectly competitive article results from the application of ite 806.30 or item 807.00.

(4) No proclamation which provides solely for a suspension r ferred to in paragraph (2) with respect to any article shall be mad under subsection (a) or (c) unless the Commission, in addition making an affirmative determination with respect to such artic

under section 201(b), determines in the course of its investigation
under section 201(b) that the serious injury (or threat thereof) sub-
stantially caused by imports to the domestic industry producing a
ike or directly competitive article results from the designation of
he article as an eligible article for the purposes of title V.

(g)(1) The [President] *Administering Authority* shall by regula-
ions provide for the efficient and fair administration of any re-
striction proclaimed pursuant to this section.

(2) In order to carry out an agreement concluded under subsec-
ion (a)(4), (a)(5), (e)(2), or (e)(3) the [President] *Administering Au-*
hority is authorized to prescribe regulations governing the entry
r withdrawal from warehouse of articles covered by such agree-
nent. In addition, in order to carry out any agreement concluded
nder subsection (a)(4), (a)(5), (e)(2), or (e)(3) with one or more coun-
ries accounting for a major part of United States imports of the
rticle covered by such agreements, including imports into a major
eographic area of the United States, the [President] *Administer-*
ng Authority is authorized to issue regulations governing the entry
r withdrawal from warehouse of like articles which are the prod-
ct of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the
xtent practicable and consistent with efficient and fair adminis-
ation, insure against inequitable sharing of imports by a relative-
small number of the larger importers.

(h)(1) Any import relief provided pursuant to this section shall,
nless renewed pursuant to paragraph (3), terminate no later than
e close of the day which is 5 years after the day on which import
elief with respect to the article in question first took effect pursu-
nt to this section.

(2) To the extent feasible, any import relief provided pursuant to
is section for a period of more than 3 years shall be phased down
ring the period of such relief, with the first reduction of relief
king effect no later than the close of the day which is 3 years
ter the day on which such relief first took effect.

(3) Any import relief provided pursuant to this section or section
1 or 352 of the Trade Expansion Act of 1962 may be extended by
e [President] *Administering Authority*, at a level of relief no
eater than the level in effect immediately before such extension,
r one period of not more than 3 years if the [President] *Admin-*
ering Authority, determines after taking into account the advice
ceived from the Commission under subsection (i)(2) or (i)(3) and
er taking into account the considerations described in section
2(c), that such extension is in the national interest.

4) Any import relief provided pursuant to this section may be re-
ced or terminated by the [President] *Administering Authority*
en he determines, after taking into account the advice received
m the Commission under subsection (i)(2) or (i)(3) and after seek-
advice of the Secretary of Commerce and the Secretary of
bor, that such reduction or termination is in the national inter-
.

5) For purposes of this subsection and subsection (i), the import
ief provided in the case of an orderly marketing agreement shall
the level of relief contemplated by such agreement.

(i)(1) So long as any import relief provided pursuant to
tion or section 351 or 352 of the Trade Expansion Act of
mains in effect, the Commission shall keep under review
ments with respect to the industry concerned (includ
progress and specific efforts made by the firms in the indus
cerned to adjust to import competition) and upon reques
[President] *Administering Authority* shall make reports
[President] *Administering Authority* concerning such
ments.

(2) Upon request of the [President] *Administering Auth*
upon its own motion, the Commission shall advise the [Pre
Administering Authority of its judgment as to the probable
ic effect on the industry concerned of the extension, reduc
termination of the import relief provided pursuant to this

(3) Upon petition on behalf of the industry concerned, fil
the Commission not earlier than the date which is 9 mont
not later than the date which is 6 months, before the da
import relief provided pursuant to this section or section 35
of the Trade Expansion Act of 1962 is to terminate by reaso
expiration of the initial period therefor, the Commissio
advise the [President] *Administering Authority* of its judg
to the probable economic effect on such industry of such te
tion.

(4) In advising the [President] *Administering Authorit*
paragraph (2) or (3) as to the probable economic effect on the
try concerned, the Commission shall take into account all ec
factors which it considers relevant, including the considerat
forth in section 202(c) and the progress and specific efforts m
the industry concerned to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) s
given on the basis of an investigation during the course of
the Commission shall hold a hearing at which interested
shall be given a reasonable opportunity to be present, to p
evidence, and to be heard.

(j) No investigation for the purposes of section 201 shall be
with respect to an article which has received import relief
this section unless *good cause is shown or* 2 years have e
since the last day on which import relief was provided with
to such article pursuant to this section.

(k)(1) Actions by the [President] *Administering Authorit*
suant to this section may be taken without regard to the pro
of section 126(a) of this Act but only after consideration of th
tion of such actions to the international obligations of the
States.

(2) If the Commission treats as the domestic industry prod
located in a major geographic area of the United States unde
tion 201(b)(3)(C), then the [President] *Administering Aut*
shall take into account the geographic concentration of do
production and of imports in that area in providing import re
any, which may include actions authorized under paragraph (

*(l)(1) If the Administering Authority determines to provide i
relief under section 202(a)(1) and an asessment of current pro
and strategy to enhance competitiveness was submitted unde
tion 16(c) of the Department of Commerce Organic Act for the*

try concerned, the Administering Authority shall publish in the Federal Register, on the same day on which action is taken under subsection (a), notice of the availability to the public of the text of such assessment and strategy and a summary thereof. Upon publication of a summary of the assessment and strategy under the preceding sentence, the Administering Authority shall be entitled to rely upon the actions outlined in such competitive assessment and strategy, and in the confidential information obtained under section 16(d) of the Department of Commerce Organic Act, as one basis for granting relief.

(2)(A) If a summary of an assessment and strategy is published under paragraph (1), a review committee consisting of the Administering Authority, the Secretary of Labor, and the Secretary of Commerce shall—

(i) monitor, on a continuing basis, actions taken by the petitioners to improve the competitive position of the industry, including actions specified in any confidential information obtained under section 16(d) of the Department of Commerce Organic Act;

(ii) make such recommendations for administrative action under existing statutory authority as may be necessary to achieve the objectives specified in the assessment and strategy; and

(iii) submit to Congress such recommended legislation as the review committee, after consultation with the industry advisory group that prepared the assessment and strategy, considers necessary or appropriate for the purpose of achieving the objectives specified in the assessment and strategy.

(B) If the review committee described in subparagraph (A) determines that the firms or workers in the domestic industry are not implementing, or are implementing in an unsatisfactory manner—

(i) the recommended objectives and actions specified in the assessment and strategy published under paragraph (1), or

(ii) the actions declared in the confidential information obtained under section 16(d) of the Department of Commerce Organic Act,

the review committee shall consult with the advisory group members on an individual or joint basis, as appropriate.

(C) If, after consultations are held under subparagraph (B) and after taking into account such other relevant information as may be available, the review committee determines that the failure to implement, or failure to implement satisfactorily, the actions described in clause (i) or (ii) of subparagraph (B)

(i) is not justified by changed circumstances, and

(ii) has adversely affected overall implementation of the objectives specified in the assessment and strategy published under paragraph (1).

the Administering Authority shall request the Commission to issue a report under section 203(i)(2) within 60 days of the date of such request. After taking such report by the Commission and the determination of the review committee into account, the Administering Authority shall determine whether all import relief provided to the industry under this section should be terminated or modified.

(m) If—

(1) the Administering Authority determines to provide import relief under section 202(a)(1), and

(2) the Commission has made an affirmative determination under section 201(d)(3) with respect to an article,

the Administering Authority shall, in addition to the actions taken under section 202(a)(1), consult and negotiate with other countries that produce or consume such article to seek the establishment of a multilateral framework for the maintenance and development of fair, equitable, and nondisruptive patterns of trade in such article.

(n) If the Administering Authority takes any action under this title with respect to capital goods, the Secretary of the Treasury shall, until the Administering Authority determines that the injury to the domestic industry no longer exists, withdraw, with respect to such capital goods of the country or countries involved, the application of any Federal subsidy (other than depreciation, but including any nonrefundable credit against Federal tax liability) that is designed to encourage the acquisition of capital goods for use in expanding or modernizing industrial capacity.

* * * * * * *

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) Determinations Requiring Action.—

[(1) In general.—If the President determines that action by the United States is appropriate—

[(A) to enforce the rights of the United States under any trade agreement; or

[(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

[(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

[(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States Commerce

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.]

(1) In general.—If the Administering Authority determine that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement,

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce,

(iii) constitutes injurious industrial targeting, or

(iv) circumvents or facilitates the circumvention of any trade agreement to which the United States is a party;

the Administering Authority may, to the extent necessary to enforce such rights, or to obtain the elimination of, or offset or otherwise respond to, such foreign act, policy, or practice, take any of the actions described in subsection (b).

) SCOPE OF ACTION.—The [President] *Administering Authority* y exercise his authority under this section with respect to any ds or sector—

(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

[(b) OTHER ACTION.—Upon making a determination described in section (a), the President, in addition to taking action referred in such subsection, may—

[(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved;

[(2) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.]

(b) AUTHORIZED ACTIONS.—If the Administering Authority determines to take action under subsection (a), the Administering Authority may—

(1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved;

(2) direct customs officers to—

(A) assess duties or impose other import restrictions on the products of, or

(B) assess fees or impose restrictions on the services of,

such foreign country or instrumentality for such time, in such an amount, and to such a degree as the Administering Authority determines appropriate;

(3) negotiate agreements (including, but not limited to, orderly marketing agreements) with foreign countries or instrumentalities to fully offset the burden or restrictions on United States commerce;

(4) submit to the President proposed administrative actions, and if necessary, legislation to implement any other government action which would restore or improve the international competitive position of the industry that has been injured or threatened with injury;

(5) recommend action by the President under subsection (c) of this section; or

(6) any combination of the actions described in the preceding paragraphs

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(d) [PRESIDENTIAL] *ADDITIONAL* PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the [President] *Administering Authority* decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the [President] *Administering Authority* shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he dete- mines that expeditious action is required, the [President] *Administering Authority* shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives [the recommendation of the Trade Representative under section 304] *any recommendation of the Administering Authority under this title* with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this [section] *title*—

(1) COMMERCE.—* * *

* * * * * * *

(3) UNREASONABLE.—The term "unreasonable" means an act, policy, or practice which, while not necessarily in violatio of or inconsistent with the international legal rights of th United States, is otherwise deemed to be unfair and inequita ble. The term includes, but is not limited to, [any act,] *unfai and inequitable natural resource input pricing (as defined i paragraph (7)) and any other act,* policy, or practice whic denies fair and equitable—

(A) market opportunities;

(B) opportunities for the establishment of an enterpris or

(C) provision of adequate and effective protection of i tellectual property rights.

* * * * * * *

(7) UNFAIR AND INEQUITABLE NATURAL RESOURCE INPUT PRI ING.—Unfair and inequitable natural resource input prici shall be considered to occur if—

(A) a product (hereinafter referred to in this paragra as an "input product")—

(i) is provided or sold by a government or a gover ment-regulated or controlled entity within a coun (hereinafter referred to in this paragraph as the " porting country"), for input use within that country, a domestic price that—

(I) is lower than the fair market value of the input product, and

(II) is not freely available to United States producers for purchase, or the equivalent thereof, of the input product for export to the United States; and

(ii) would, if sold at the fair market value, constitute a significant portion of the total cost of the merchandise in or for which the input product is used;

except that, unfair and inequitable natural resource input pricing shall not be considered to exist either if the input product is not exported solely due to commercial considerations, or the access, or the equivalent thereof, to the input product for export is not denied to United States producers by the government of the exporting country, or

(B) the right to remove or extract a product (hereinafter in this paragraph referred to as the "removal right") is provided or sold by a government or a government-regulated or controlled entity within an exporting country and—

(i) that product is for input use within that exporting country;

(ii) the removal right is provided or sold at a domestic price that is lower than the fair market value of that right; and

(iii) the product to which the removal right applies would, if that right was sold at a fair market value, constitute a significant portion of the total cost of the manufacture or production of the merchandise in or for which the product is used.

r purposes of this paragraph, the term "fair market value" eans—

(C) with respect to an input product, the price that, in the absence of government regulation or control, a willing buyer would pay a willing seller for that product from the exporting country in an arms-length transaction; and in determining the fair market value of an input product, the administering authority shall take into account—

(i) the export price of the product,

(ii) prices of the natural resource product in arm's length transactions within the exporting country,

(iii) the current market clearing price at which the product can be sold in markets of other countries (including the United States) that are non-State-controlled-economy-country markets, unless such product cannot be economically transported to such other markets,

(iv) the prices at which the product is generally available in world markets,

(v) any cost advantages the exporting country may have in relation to other sellers, and

(vi) the availability to the exporting country of markets described in clause (iii);

(D) with respect to a removal right, the price that, in the absence of government regulation or control, a willing

buyer would pay a willing seller in an arms-length transaction for the removal right in the exporting country providing or selling the right; and in determining the fair market value of a removal right, the administering authority shall take into account—

(i) the price paid in the exporting country for a comparable removal right not subject to government regulation or control,

(ii) the price paid in the exporting country for a comparable removal right sold or offered for sale through a process of competitive bidding, and

(iii) the price paid for a comparable removal right in a comparable region of a country other than the exporting country.

(8) Injurious industrial targeting.—The term "injurious industrial targeting" means any combination of coordinated government actions, whether carried out severally or jointly—

(A) which are bestowed on a specific enterprise, industry, or group thereof,

(B) which assist such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise, and

(C) which cause, or threaten to cause, material injury (within the meaning of section 305(c)).

(f) If the Administering Authority takes any action under subsection (b) with respect to capital goods, the Secretary of the Treasury shall, until the Administering Authority determines that the unfair trade practice no longer exists, withdraw, with respect to such capital goods of the country or countries involved, the application of any Federal subsidy (other than depreciation, but including any nonrefundable credit against Federal tax liability) that is designed to encourage the acquisition of capital goods for use in expanding or modernizing industrial capacity. If the President decides to take action recommended under subsection (a)(4) or (a)(5), action taken under this subsection may be suspended by the President.

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES [TRADE REPRESENTATIVE] *ADMINISTERING AUTHORITY.*

(a) Filing of Petition.—

(1) In general.—Any interested person may file a petition with the [United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative")] requesting the [President] *Administering Authority* to take action under section 301 and setting forth the allegations in support of the request.

(2) Review of allegations.—The [Trade Representative] *Administering Authority* shall review the allegations in the petition and, not later than forty-five days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations Regarding Petitions.—

(1) Negative determination.—If the [Trade Representative] *Administering Authority* determines not to initiate an investigation with respect to a petition, he shall inform the peti

tioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) Affirmative determination.—If the [Trade Representative] *Administering Authority* determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The [Trade Representative] *Administering Authority* shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the thirty-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(c) Determination To Initiate by Motion of [Trade Representative] *Administering Authority*.—

(1) Determination to initiate.—If the [Trade Representative] *Administering Authority* determines with respect to any matter that an investigation should be initiated[in order to advise the President concerning the exercise of the President's authority under section 301], the [Trade Representative] *Administering Authority* shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2).

(2) Consultation before initiation.—The [Trade Representative] *Administering Authority* shall, before making any determination under paragraph (1), consult with appropriate committees established pursuant to section 135.

SEC. 303. CONSULTATION [UPON INITIATION OF INVESTIGATION]

(a) In General.—On the date an affirmative determination is made under section 302(b) the [Trade Representative] *Administering Authority*, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition or the determination of the [Trade Representative] *Administering Authority* under section 302(c)(1). If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the [Trade Representative] *Administering Authority* shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The [Trade Represenative] *Administering Authority* shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of Request for Consultations for up to 90 Days.—

(1) In general.—Notwithstanding the provisions of subsection (a)—

(A) the [United States Trade Representative] *Administering Authority* may delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under [section 304] *sections 304 and 305* shall be extended for the period of such delay.

(2) NOTICE AND REPORT.—The [Trade Representative] *Administering Authority* shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required by [section 306] *section 310.*

(c) DOMESTIC FIRMS AND WORKERS.—The Administering Authority shall consult with representatives of domestic firms and workers that may be affected by any investigation initiated under section 302, including the appropriate advisory committees established under section 135, regarding any determination which is required to be made by the Administering Authority under this title.

[SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.

[(a) RECOMMENDATIONS—

[(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—

[(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

[(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

[(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

[(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

[(2) SPECIAL RULE.—In the case of any petition—

[(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

[(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

[(3) Report if settlement delayed.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

[(b) Consultation Before Recommendation.—Before recom-nending that the President take action under section 301 with espect to the treatment of any product or service of a foreign ountry or instrumentality which is the subject of a petition filed nder section 302, the Trade Representative, unless he determines hat expeditious action is required—

[(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

[(2) shall obtain advice from the appropriate advisory representatives provided for under section 135; and

[(3) may request the views of the International Trade commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

f the Trade Representative does not comply with paragraphs (1) nd (2) because expeditious action is required, he shall, after naking the recommendation concerned to the President, comply vith such paragraphs.]

SEC. 304. INVESTIGATIONS BY THE ADMINISTERING AUTHORITY

(a) COLLECTION AND VERIFICATION OF INFOMATION.—

(1) FOREIGN GOVERNMENTS AND ENTERPRISES.—

(A) QUESTIONNAIRES.—In conducting any investigation initiated under section 302, the Administering Authority shall present detailed questionnaires to the foreign governments and the foreign enterprises involved in such investigation in order to obtain information concerning the allegations contained in the petition.

(B) VERIFICATION.—The Administering Authority shall verify all information provided by any foreign government or foreign enterprise in the course of any investigation initiated under section 302 which is relied on by the Administering Authority in making any determinations under this title.

(2) USE OF BEST INFORMATION.—If—

(A) any foreign government or foreign enterprise fials to provide information requested by the Administering Authority concerning any acts, policies, or practices of such government or enterprise which are under investigation, or

(B) the information provided by any foreign government or enterprise is not sufficient or is otherwise unsatisfactory,

the determinations of the Administering Authority under this title shall be based on the best information otherwise available, which may be the allegations and information contained in the petition.

(b) PRELIMINARY DETERMINATIONS.—

(1) IN GENERAL.—By no later than the date that is 5 months after the date on which an investigation is initiated under section 302, th Administering Authority shall make a preliminary determination based upon such investigation as to whether there is reason to believe that—

(A) the rights of the United States under any trade agreement are not being enforced, or

(B) any act, policy, or practice of a foreign country or instrumentality—

(i) is inconsistent with the provisions of any trade agreement or otherwise denies benefits to the United States under any trade agreement,

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce,

(iii) constitutes injurious industrial targeting, or

(iv) circumvents or facilitates the circumvention of any trade agreement to which the United States is a party.

(2) PROVISIONAL ACTION.—If the preliminary determination of the Administering Authority under paragraph (1) is affirmative, the Administering Authority may take any action described in paragraph (1), (2), or (3) of section 301(b), or any combination of such actions, pending completion of the investigation.

(c) FINAL DETERMINATION.—

(1) IN GENERAL.—By no later than the date that 11 months after the date on which an investigation is initiated under sec-

tion 302, the Administering Authority shall make a final determination based upon such investigation as to whether any of the circumstances described in subparagraph (A) or (B) of subsection (b)(1) exists.

(2) ACTIONS AFTER FINAL DETERMINATIONS.—

(A) AFFIRMATIVE FINAL DETERMINATION.—

(i) IN GENERAL.—Except as provided in section 306, if the final determination under paragraph (1) is affirmative, the Administering Authority shall, by no later than the date that is 30 days after the date of such final determination, make a determination as to what action, if any, the Administering Authority will take under section 301(a).

(ii) CONSULTATION.—If the final determination made under paragraph (1) is affirmative, the Administering Authority shall consult with the petitioner, if any, and representatives of the affected domestic firms and workers regarding the action, if any, which is to be taken under section 301(a).

(iii) REPORT ON FAILURE TO TAKE ACTION.—If the final determination made under paragraph (1) is affirmative and the Administering Authority declines to take any action under section 301(a), the Administering Authority shall submit to the Congress a written statement which specifies—

(I) the reasons why the Administering Authority decided to take no action under section 301(a), and

(II) the views of representatives of the affected domestic firms and workers regarding such decision.

(B) NEGATIVE FINAL DETERMINATION.—If—

(i) the final determination under paragraph (1) is negative, and

(ii) the Administering Authority took any action under subsection (b)(2),

the Administering Authority shall terminate such action and refund any duties or fees paid by reason of such action.

(d) PUBLICATION.—Notice of the determinations made under subsections (b)(1) and (c)(1) of this section and of any determination to take action under section 301(a) shall be published in the Federal Register.

SEC. 305. INVESTIGATIONS OF INJURIOUS INDUSTRIAL TARGETING.

(a) INVESTIGATIONS BY ADMINISTERING AUTHORITY.—If the Administering Authority makes a preliminary determination under section 304(b)(1) that the circumstances described in section 304(b)(1)(B)(iii) exist, the Administering Authority—

(1) shall establish an advisory committee composed of—

(A) representatives of domestic firms and workers in the industries which are affected by such targeting, and

(B) appropriate Federal officials, and

(2) by no later than the date on which a final determination is required to be made under section 304(c)(1) with respect to such targeting, shall formulate, in consultation with such advi-

sory committee, proposals which would restore or improve the competitive position of such domestic industries in both domestic and foreign markets.

(b) INVESTIGATIONS BY INTERNATIONAL TRADE COMMISSION.—

(1) NOTICE OF INVESTIGATION.—On the day on which the Administering Authority initiates an investigation under section 302 of injurious industrial targeting, the Administering Authority shall submit to the United States International Trade Commission (hereafter in this title referred to as the "Commission") a copy of—

(A) if the investigation is initiated under section 302(a), the petition, or

(B) if the investigation is initiated under section 302(b), a written statement describing the issues under investigation.

(2) PRELIMINARY DETERMINATION.—By no later than the date that is 60 days after the date on which notice of an investigation is submitted to the Commission under paragraph (1), the Commission shall make a preliminary determination, based upon the best information available to the Commission at the time of the investigation, of whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury; or

(B) the establishment or growth of an industry in the United States is materially retarded;

by reason of sales or likely sales in the United States or other foreign markets of the merchandise which is the subject of such investigation.

(3) FINAL DETERMINATION.—The Commission shall make a final determination of whether any of the circumstances described in paragraph (2) exist with respect to the merchandise that is the subject of an investigation initiated under section 302 by no later than the date that—

(A) if an affirmative preliminary determination under section 304(b)(1) was made with respect to such investigation, is 45 days after the date on which an affirmative final determination is made under section 304(c)(1) with respect to such investigation, or

(B) if the Administering Authority made a negative preliminary determination under section 304(b)(1) with respect to such investigation, is 75 days after the day on which an affirmative final determination is made under section 304(c)(1) with respect to such investigation.

No final determination shall be required under this subsection with respect to an investigation if the final determination under section 304(c)(1) is negative.

(4) JUDICIAL REVIEW.—Any determination made by the Commission under this section shall be subject to review by the United States Court of International Trade as if such determination were made under either section 703(a) or 705(b) of the Tariff Act of 1930, as the case may be.

(c) MATERIAL INJURY AND THREAT OF MATERIAL INJURY.—

(1) MATERIAL INJURY.—

(A) In general.—For purposes of this section, the term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) Volume and consequent impact.—In making determinations under this section, the Commission shall consider, among other factors—

(i) the volume of sales of the merchandise which is the subject of the investigation,

(ii) the effect on sales of that merchandise on prices in the United States or other foreign markets for like products, and

(iii) the impact of sales of such merchandise on domestic producers of like products.

(C) Evaluation of volume and price effects.—For purposes of this section—

(i) Volume.—In evaluating the volume of sales of merchandise, the Commission shall consider whether the volume of sales of the merchansdise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States or other foreign markets, is significant.

(ii) Price.—In evaluating the effect of sales of the merchandise on prices, the Commission shall consider—

(I) whether there has been significant price undercutting by the foreign merchandise as compared with the price of like products of the United States, and

(II) whether the effect of sales of the merchandise otherwise depresses prices to a significant degree or prevents to a significant degree price increases that otherwise would have occurred.

(iii) Impact on affected industry.—In examining the inudstry involved in the investigation, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic and foreign prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(IV) displacement of United States exports of like products in third country markets.

(2) Threat of material injury.—

(A) In general.—In determining whether an industry in the United States is threatened with material injury, the Commission shall consider, among other relevant economic factors—

(i) any increase in production capacity or existing unused capacity in foreign countries under investiga-

tion that is likely to result in increased exports from such country,

(ii) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(iii) the probability that imports of the merchandise under investigation will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of like products,

(iv) the probability that exports from foreign countries under investigation will enter third country markets at prices that will have a depressing or suppressing effect on prices for United States exports of like products or will decrease sales of like products of the United States in such third country markets,

(v) any substantial increase in inventories of the merchandise in the United States or in third country markets,

(vi) the extent to which the United States market is the focal point for exports of such merchandise by reasons of restraints on exports of such article to, or on imports of such article into, third country markets, and

(vii) any other demonstratable adverse trends that indicate that the importation or sale for importation of such merchandise, or sales of such merchandise in third country markets, will be the cause of actual injury.

SEC. [305.] *309.* REQUESTS FOR INFORMATION.

(a) In General.—Upon receipt of written request therefor from any person, the [Trade Representative] *Administering Authority* shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the [Trade Representative] *Administering Authority* or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) If Information Not Available.—If information that is requested by an interested party under subsection (a) is not available to the [Trade Representative] *Administering Authority* or other Federal agencies, the [Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

[(c) Certain Business Information Not Made Available.—

[(1) In general.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section

552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

[(A) the person providing such information certifies that—

[(i) such information is business confidential,

[(ii) the disclosure of such information would endanger trade secrets or profitability, and

[(iii) such information is not generally available;

[(B) the Trade Representative determines that such certification is well-founded; and

[(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

[(2) USE OF INFORMATION.—The Trade Representative may—

[(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

[(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.]

(c) CONFIDENTIAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Upon receipt of a written request for confidential business information obtained by the Administering Authority in connection with any investigation initiated under this title, including any information submitted by foreign governments, the Administering Authority shall make such information available (other than customer names and the identity of market research organizations) under a protective order described in paragraph (5).

(2) NATIONAL SECURITY.—No information classified for national security reasons shall be made available under this section.

(3) PROCEDURES.—The Administering Authority shall act upon requests for access to confidential business information within 10 days after receiving such request.

(4) CONTINUING REQUEST.—A request for confidential business information shall be treated as continuing for the period of the investigation.

(5) PROTECTIVE ORDER.—The protective order under which confidential business information is made available under this subsection shall contain such requirements as the Administering Authority may prescribe by regulation. The Administering Authority shall prescribe regulations that provide such sanctions for violations of protective orders as the Administering Authority determines to be appropriate, including disbarment from practice before the Administering Authority.

SEC. [306.] *310.* ADMINISTRATION.

The [Trade Representative] *Administering Authority* shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, and the actions taken, or the reasons for no action, [by the President] under section 301.

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TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

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SEC. 406. MARKET DISRUPTION.

(a)(1) * * *

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(3) The Commission shall report to the [President] *Secretary of Commerce* its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the [President] *Secretary of Commerce*. The Commission shall furnish to the [President] *Secretary of Commerce* a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the [President] *Secretary of Commerce*, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) For purposes of sections 202 and 203, an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section 201(b), except that—

(1) the [President] *Secretary of Commerce* may take action under sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the **[**President**]** *Secretary of Commerce* finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the **[**President**]** *Secretary of Commerce* further finds that emergency action is necessary, he may take action under sections 202 and 203 as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the **[**President**]** *Secretary of Commerce* under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the **[**President**]** *Secretary of Commerce*, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the **[**President**]** *Secretary of Commerce* pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the **[**President**]** *Secretary of Commerce* by an entity described in section 201(a)(1) requesting the **[**President**]** *Secretary of Commerce* to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the **[**President**]** *Secretary of Commerce* determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

* * * * * * *

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The **[**President**]** *Administering Authority* may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the **[**President**]** *Administering Authority* shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country **[**with respect to which there is in effect an Executive order or Presidential proclamation**]** *which is designated* by the President of the United States designating such country **[**President**]** *Administering Authority* as a beneficiary developing country for purposes of this title. Before the **[**President**]** *Administering Authority* designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the consideration entering into such decision.

(2) If the **[**President**]** *Administering Authority* has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation **[**(either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order of Presidential proclamation which has the effect of terminating such designation)**]** unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the **[**President**]** *Administering Authority* may by **[**Executive order or Presidential proclamation**]** provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(4) For purposes of this title, the term "internationally recognized workers rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) No designation shall be made under this section with respect to any of the following:

Australia
Austria
Canada
Czechoslovakia
European Economic Community member states
Finland
Germany (East)

Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

In addition, the [President] *Administering Authority* shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the [President] *Administering Authority* has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, including patents, trademarks, or copyrights,

unless—

(D) the [President] *Administering Authority* determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) produced, processed, or transported in such country from entering the United States unlawfully;

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of the United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(7) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

(8) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (5), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the [President] *Administering Authority* determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the [President] *Administering Authority* shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

* * * * * * *

(e)(1) The [President] *Administering Authority* may exempt from the application of paragraph (2) of section (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party of such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The [President] *Administering Authority* may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The [President] *Administering Authority* shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The [President] *Administering Authority* shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. [Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries.] *Before any such list is furnished to the Commission, there shall be in effect a designation of beneficiary developing countries under section 502.* The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action [under section 101 of this Act to carry out a trade agreement entered into under section 101.] *in* *section 101, except that all advice shall be presented to the Administering Authority.* After receiving the advice of the Commission with respect to the listed articles, the [President] *Administering Authority* shall designate those articles he considers appropriate to be eligible articles for purposes of this title by [Executive order or Presidential proclamation].

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury, after consulting with the [United States Trade Representative] *Administering Authority* shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The [President] *Administering Authority* may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the [President] *Administering Authority* determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The [President] *Administering Authority* may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the [President] *Administering Authority* shall consider the factors set forth in sections 501 and 502(c).

(2) The [President] *Administering Authority* shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the [President] *Administering Authority* has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The [President] *Administering Authority* shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the [President issues an Executive order or Presidential proclamation revoking] *Administering Authority revokes* his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the [President] *Administering Authority* determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically thereafter, the [President] *Administering Authority* shall conduct a general review of eligible articles based on the consideration described in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the [President] *Administering Authority* determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the [President] *Administering Authority* may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the [President] *Administering Authority*—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the [President] *Administering Authority* shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the [President] *Administering Authority* determines that such waiver is no longer warranted due to changed circumstances.

(D)(i) The [President] *Administering Authority* may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The [President] *Administering Authority* may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered from any beneficiary developing country during any calendar year beginning after 1984 which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year if for the preceding calendar year such beneficiary developing country—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during that year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the **[**President**]** *Administering Authority* may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the **[**President**]** *Administering Authority* determines and publishes in the Federal Register that, with respect to such country—

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the **[**President**]** *Administering Authority* determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The **[**President**]** *Administering Authority* shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The **[**President**]** *Administering Authority* may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

(f)(1) the [President] *Administering Authority* determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent," and

(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means the sum of—

(i) $8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) $8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the [President] *Administering Authority* shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The [President] *Administering Authority* shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

(B) BASIS FOR DETERMINATION.—Any determination by the Commission under this section than an industry in the United States is threatened with material injury shall be made on the basis of the evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition, but can be made on the basis of official statements of intended action by foreign governments.

(3) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate

under paragraph (1)(C) or (2) shall not necessarily give decisive guidance with respect to the determination of material injury by the Commission.

SEC. 306. MANDATORY ACTION IN CASES OF INJURIOUS INDUSTRIAL TARGETING.

(a) PROVISIONAL ACTION.—If—

(1) the Administering Authority makes a preliminary determination under section 304(b)(1) with respect to an investigation that an act, policy, or practice of a foreign country or instrumentality constitutes injurious industrial targeting, and

(2) the Commission makes an affirmative preliminary determination under section 305(b)(2) with respect to such investigation,

the Administering Authority shall, pending conclusion of such investigation, take at least one of the actions described in paragraph (1), (2), or (3) of section 301(b), or any combination of such actions, in order to prevent further injury, or threat of injury, from such injurious industrial targeting.

(b) ACTION IN RESPONSE TO FINAL DETERMINATION.—

(1) IN GENERAL.—Except as provided in subsection (c), if—

(A) the Administering Authority makes a final determination under section 304(c)(1) with respect to any investigation that an act, policy, or practice of a foreign country or instrumentality constitutes injurious industrial targeting, and

(B) the Commission makes an affirmative final determination under section 305(b)(3) with respect to merchandise that is the subject of such investigation,

the Administering Authority shall take at least one of the actions described in section 301(b) in order to fully offset the material injury, or threat of material injury, from such injurious industrial targeting.

(2) PROPOSALS.—

(A) IN GENERAL.—If the requirements of subparagraphs (A) and (B) of paragraph (1) are met, the Administering Authority shall submit to the President—

(i) any proposed administrative action, and

(ii) any proposed legislation,

which the Administering Authority, in consultation with the advisory committee established under section 305(a)(1), determines is necessary to restore or improve the competitive position of any industry that is materially injured, or threatened with material injury, by the injurious industrial targeting.

(B) SPECIAL CONSIDERATION OF PROPOSED LEGISLATION.—The President may submit to the Congress a bill that consists of the legislative proposal described in subparagraph (A)(ii).

(3) REPORT TO CONGRESS.—If the requirements of subparagraphs (A) and (B) of paragraph (1) are met, the Administering Authority shall submit a written statement to the Congress which specified the actions that the Administering Authority will take under paragraph (1) to offset the material injury, or

threat of material injury, from the injurious industrial targeting.

(c) SETTLEMENT AGREEMENTS.—In lieu of taking action under subsection (b)(1), the Administering Authority may enter into an agreement with the foreign country or instrumentality involved if—

(1) such agreement completely eliminates the material injury, or threat of material injury, from the injurious industrial targeting, and

(2) in the case of an investigation initiated under section 302(a), such agreement is approved by the petitioner.

(d) PUBLICATION.—Notice of any action taken by the Administering Authority under this section, and of any agreements entered into under subsection (c), shall be published in the Federal Register.

SEC. 307. TERMINATION AND COMPENSATION UPON GATT DISAPPROVAL.

If the contracting parties to the General Agreement on Tariffs and Trade disapprove of any action taken by the Administering Authority under section 301 or 306, the Administering Authority may take such other action as the Administering Authority determines appropriate to compensate any foreign country or instrumentality that is adversely affected by such action, including, but not limited to—

(1) modification or termination of the action taken under section 301 or 306, or

(2) modification or continuance of any existing duty or any duty-free or excise treatment.

SEC. 308. REMEDIES UNDER TARIFF ACT OF 1930.

If, in the course of an investigation conducted under this title, the Administering Authority has reason to believe that a foreign government is engaged in any action or practice for which relief is available under section 303 or title VII of the Tariff Act of 1930, the Administering Authority shall consult with the petitioner, if any, and the representatives of the domestic firms and workers that may be affected by such action or practice regarding the advisability and desirability of taking action under the appropriate provisions of section 303 or title VII of the Tariff Act of 1930.

TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS.

For purposes of this Act—

(1) * * *

* * * * * * *

(11) The term "Administering Authority" means the United States Trade Representative or any officer of the United States to whom the responsibility for carrying out the duties of the Administering Authority under this Act is transferred by law.

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TARIFF ACT OF 1930

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

* * * * * * *

EC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) * * *

* * * * * * *

(b) The duty imposed under subsection (a) shall be imposed, nder regulations prescribed by the administering authority (as dened in section 771(I)), in accordance with title VII of this Act (reating to the imposition of countervailing duties) except that, in the ase of any imported article or merchandise which is not free of uty—

(1) * * *

* * * * * * *

[(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and**]**

[(4)**]** *(3)* any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which are not permitted or required by this subsection shall be disregarded.

EC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) MARKETING OF ARTICLES.— * * *

* * * * * * *

(f) No exception may be made to the labeling of imported articles nder subsection (a)(3) with respect to items imported under item 0.05 of the Tariff Schedules of the United States.

[(f)**]** *(g)* ADDITIONAL DUTIES FOR FAILURE TO MARK.—If at the me of importation any article (or its container, as provided in subection (b) hereof) is not marked in accordance with the requireents of this section, and if such article is not exported or deroyed or the article (or its container, as provided in subsection (b) ereof) marked after importation in accordance with the requireents of this section (such exportation, destruction, or marking to accomplished under customs supervision prior to the liquidation the entry covering the article, and to be allowed whether or not e article has remained in continuous customs custody), there all be levied, collected, and paid upon such article a duty of 10 r centum ad valorem, which shall be deemed to have accrued at e time of importation, shall not be construed to be penal, and all not be remitted wholly or in part nor shall payment thereof avoidable for any cause. Such duty shall be levied, collected, and id in addition to any other duty imposed by law and whether or t the article is exempt from the payment of ordinary customs ties. The compensation and expenses of customs officers and emoyees assigned to supervise the exportation, destruction, or markg to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government of the importer.

[(g)**]** *(f)* DELIVERY WITHHELD UNTIL MARKED.—No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (f) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[(h)**]** *(i)* PENALTIES.—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this Act, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.

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Part II—United States Tariff Commission

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SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

(a) *(1)* UNFAIR: METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, **[**efficiently and economically operated,**]** in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.

(2) For purposes of this section, the following acts are declared to be unfair and to have the effect or tendency to destroy or substantially injure an industry in the United States or to impair the establishment of such an industry, if the Commission first determines that an industry consisting of the United States operations of the owner of the intellectual property at issue and its licensees, devoted to the lawful exploitation of the rights described below, exists or is likely to be established:

(A) Unauthorized importation of an article into the United States which infringes a valid United States patent, or the unauthorized sale or offer for sale of such an article.

(B) Unauthorized importation of an article into the United States which—

(i) was made, produced, processed, or mined under, or by means of, a process covered by a valid United States patent, and

(ii) if made, produced, processed, or mined in the United States, would infringe a valid United States patent,

or the unauthorized sale or offer for sale of such an article.

(C) Unauthorized importation of an article into the United States which infringes a valid United States copyright, or the unauthorized sale or offer for sale of such an article.

(D) Importation of an article into the United States which infringes a valid United States trademark, or the sale or offer for sale of such an article, if the manufacturer or production of such imported article was unauthorized.

(E) Unauthorized importation of an article into the United States which infringes a valid United States maskwork, or the unauthorized sale or offer for sale of such an article.

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION; TIME LIMITS.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. [The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation.] *The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than 6 months (9 months in more complicated cases) after the date of publication of notice of such investigation.* The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the [one-year and 18-month] *6-month and 9-month* periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

* * * * * * *

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of section 303 or of subtitle B of title VII of the Tariff Act of 1930, it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such Act. If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, it shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the [1-year or 18-month] *6-month and*

9-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 303 of this Act or by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 303, 701, or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(g) REFERRAL TO THE [PRESIDENT] *ADMINISTERING AUTHORITY*.—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the [President] *Administering Authority* a copy of such determination and the action taken under subsection (d), (e), or (f), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the [President] *Administering Authority*, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), or (f) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), or (f) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the [President] *Administering Authority* does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the [President] *Administering Authority* notifies the Commission of his approval, as the case may be.

(5) For purposes of this subsection, the term "Administering Authority" has the meaning given to such term by section 601(11) of the Trade Act of 1974.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * * * *

Subtitle A—Imposition of Countervailing Duties

EC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) General Rule.—* * *

(b) Country Under the Agreement.—For purposes of this subitle, the term "country under the Agreement" means a country *hich meets the requirements of subsection (c) and—*

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

"(c) Additional Requirements.—

(1) In general.—A country meets the requirements of this subsection if such country has made a commitment under the General Agreement on Tariffs and Trade to—

(A) eliminate its export subsidies within 1 year (or within 5 years in the case of least developed countries),

(B) not increase, extend, or add export subsidies, and

(C) eliminate immediately export subsidies on those products in which such country is competitive.

(2) For the purpose of determining the competitiveness of merchandise, the Commission, at the request of the Administering Authority, shall conduct an investigation of whether the merchandise is already competitive in the United States market and whether the merchandise would be competitive in the absence of export subsidies. The Commission shall submit a final report on such investigation to the Administering Authority by no later than the date is 60 days after the date on which the Administering Authority requested such investigation.

(d) Review of Compliance; Termination of Status.—

(1) Review.—The Administering Authority shall review the current status of, and compliance with, the agreements de-

scribed in subsection (b) or (c) at least once during each 12 month period following the date on which the agreement becomes effective.

(2) PUBLICATION OF DETERMINATIONS.—The Administering Authority shall determine whether each foreign country has honored each term of the agreements described in subsection (b) or (c) that such country entered into and shall publish such determinations in the Federal Register by no later than the date that is 45 days after the anniversary of the effective date of the agreement.

(3) TERMINATION OF STATUS; SUSPENSION OF LIQUIDATION.—

(A) IN GENERAL.—If the Administering Authority determines that a foreign country has failed to honor any term of an agreement described in subsection (b) or (c) that such country entered into—

(i) such country shall cease to be treated as a country under the Agreement for purposes of this Act on and after the day that is 30 days after the date on which such determination is published in the Federal Register, and

(ii) the Administering Authority shall—

(I) order the suspension of liquidation of all entries, and withdrawals from warehouse, for consumption after such day of all merchandise of such country that has, at any time, been the subject of an affirmative determination under section 705(a), and

(II) initiate investigations under section 303 with respect to such merchandise on such day.

(B) NEGATIVE PRELIMINARY DETERMINATION.—If the preliminary determination of the Administering Authority described in section 703(b) in an investigation conducted under section 303 is negative, the Administering Authority shall terminate on the day of such preliminary determination any suspension of liquidation ordered under subparagraph (A)(ii)(I) with respect to the merchandise that is involved in such investigation.

[(c)**]** *(e)* CROSS REFERENCE.—

For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

* * * * * * *

(a) INITIATION BY ADMINISTERING AUTHORITY.—* * *

* * * * * * *

(e) SURGE OF IMPORTS.—

(1) MONITORING AND SUSPENSION OF LIQUIDATION.—If the determination under subsection (c) is affirmative and the petition alleges that a subsidy is inconsistent with the Agreement, or if an investigation is commenced under subsection (a) and the Administering Authority has reason to believe that a subsidy is inconsistent with the Agreement, the Administering Authority shall immediately—

(A) notify the United States Customs Service of such determination and direct customs officers to collect and forward to the Administering Authority (at least once every 7 days until a final determination is made under section 705(a) or the investigation is terminated) information on the volume and value of entries of the class or kind of merchandise which is the subject of the investigation,

(B) shall order the suspension of liquidation of all entries of such merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of such determination in the Federal Register, and

(C) begin monitoring (until a final determination is made under section 705(a) or the investigation is terminated) the volume of imports of such merchandise to determine whether the volume of such imports has significantly increased over the volume of such imports prior to the date on which the petition is filed under subsection (b)(1) or on which the investigation is commenced under subsection (a).

(2) Publication of determination.—The Administering Authority shall publish in the Federal Register notice of any affirmative determination made under paragraph (1)(C) as soon as practicable.

(3) Limitation on determination.—No determination may be made under paragraph (1)(C) prior to the date that is 60 days after—

(A) the date on which the petition that initiated the investigation is filed under subsection (b), or

(B) the date on which the investigation is commenced under subsection (a).

SEC. 703. PRELIMINARY DETERMINATIONS.

(a) Determination by Commission of Reasonable Indication of Injury.— * * *

(b)(1) Preliminary Determination by Administering Authority.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a) but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided, with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy. *If the determination of the Administering Authority under this subsection is negative, the Administering Authority shall terminate any suspension of liquidation ordered under section 702(e)(1)(B) with respect to the merchandise that is the subject of the investigation.*

(2) Notwithstanding subsection (b)(1), when the petition is one subject to subsection 702(b)(3), the Administering Authority shall, taking into account the nature of the subsidy concerned, make the determination required by subsection 703(b)(1) on an expedited

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basis and within 85 days after the date on which the petition is filed under section 702(b) unless the provision of section 703(c) apply.

(3) Preliminary Determination Under Waiver of Verification.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure the petitioner and each party which is an interested party described in subparagrph (C), (D), (E), or (F) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waive or of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminry determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

* * * * * * *

(d) Effect of Determiniation by the Administering Authority.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administrative authority—

(1) shall, *if suspension of liquidation has not been ordered under section 702(e)(1)(B),* order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

* * * * * * *

(e) Critical Circumstances Determinations.—

(1) In general.—**[**If a petitioner alleges critical circumstances in its original petition, or by amendment**]** *If the Administering Authority has made an affirmative determination under section 702(e)(1)(C)* at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

[(2) Suspension of liquidation.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, by amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.]

(2) Suspension of liquidation; posting of bond.—If the determination of the Administering Authority under paragraph (1) is affirmative—

(A) the Administering Authority shall order the posting of a cash deposit, bond, or other security under subsection (d)(2) for, and

(B) any suspension of liquidation ordered under this subtitle shall apply to, or, if notice of such suspension of liquidation is already published, be amended to apply to,

unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which the notice of the preliminary determination made under subsection (b) is published in the Federal Register.

* * * * * * *

(i) Waiver of Preliminary Determination by Commission.—If the Commission has made an affirmative determination under subsection (a) or section 705(b), 733(a), or 735(b) with respect to the merchandise which is the subject of the investigation during the 1-year period ending on the date on which such investigation is initiated—

(1) the Commission shall not be required to make a preliminary determination under subsection (a) or section 733(a), as the case may be, and

(2) subsection (b) or section 733(b), as the case may be, shall be applied without regard to the requirement that an affirmative determination under subsection (a) or section 733(a) be obtained.

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) Termination of Investigation Upon Withdrawal of Petition.—

(1) In general—* * *

* * * * * * *

(b) Agreements To Eliminate [or Offset Completely] a Subsidy or To Cease Exports of Subsidized Merchandise.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

[(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or]

(1) to eliminate the subsidy completely with respect to that merchandise exported directly or indirectly to the United States after the date on which the investigation is suspended, or

* * * * * * *

(f) Effects of Suspension of Investigation.—

(1) In general.—* * *

(2) Liquidation of entries.—

(A) Cessation of exports; complete elimination of net subsidy.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under [section 703(d)(1),] *this subtitle,*

(ii) if the liquidation of entries of such merchandise was suspended [pursuant to a previous affirmative preliminary determination] under this subtitle in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section [703(d)(1).] *703(d)(2).*

(B) Other agreements.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section [703(d)(1),] this subtitle, or, if the liquidation of entries of such merchandise was suspended [pursuant to a previous affirmative preliminary determination] under this subtitle in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

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(h) Review of Suspension.—

(1) In general.—* * *

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(3) Suspension of liquidation to continue during review period.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension

of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under **[**section 703(d)(1)**]** *this subtitle,* and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation **[**under section 703(d)(1)**]** of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be international, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties of the investigation, and the Commission of its action under this paragraph.

(2) INTERNATIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(l) EFFECT OF TERMINATION OF INVESTIGATION.—If an investigation under this subtitle is terminated, the Administering Authority shall—

(1) terminate any suspension of liquidation ordered under this subtitle with respect to entries of the merchandise which was the subject of the investigation, and

(2) release any cash deposit, bond, or other security required under this subtitle with respect to such entries.

SEC. 705. FINAL DETERMINATIONS.

(a) Final Determination by Administering Authority.—

(1) In general.—* * *

[(2) Critical circumstances determinations.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

[(A) the subsidy is inconsistent with the Agreement, and

[(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.]

(2) Critical circumstances determinations.—If the final determination of the Administering Authority under paragraph (1) is affirmative and the Administering Authority has made an affirmative determination under section 702(e)(1)(C), such final determination shall also contain a finding as to whether—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(b) Final Determination by Commission.—

(1) In general.—* * *

* * * * * * *

[(4) Certain additional findings.—

[(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

[(i) there is material injury which will be difficult to repair, and

[(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

[(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.]

(4) ADDITIONAL FINDING IF THREAT OF INJURY FOUND.—If the final determination of the Commission under paragraph (1) is that there is no material injury but that there is threat of material injury, such determination shall include a finding as to whether material injury by reason of imports of the merchandise with respect to which the Administering Authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) * * *

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order [under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and] *the suspension of liquidation of all entries of the merchandise that is the subject of the investigation and shall order under section 703(d)(2)* the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination [and the administering authority shall—].

[(A) terminate the suspension of liquidation under section 703(d)(1), and

[(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

[(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

[(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

[(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).]

(3) EFFECT OF CERTAIN DETERMINATIONS ON SUSPENSIONS OF LIQUIDATION AND COLLECTION OF BOND OR CASH DEPOSIT.—If the determination of the Administering Authority under subsection (a)(2) is negative or the determination of the Commission under subsection (b)(1) is that there is no material injury but that there is a threat of material injury or that the establishment of

an industry in the United States is materially retarded, the Administering Authority shall—

(A) terminate any suspension of liquidation ordered under this subtitle of entries of the merchandise entered, or withdrawn from warehouse, for consumption before the date on which the preliminary determination made under section 703(b) was published in the Federal Register, and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2) with respect to such entries.

(4) Effect of affirmative determination under subsection (a)(2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) *or 702(e)(1)(B)* to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which **[**suspension of liquidation was first ordered**]** *the preliminary determination made under section 703(b) was published in the Federal Register*; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 705(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which **[**suspension of liquidation is first ordered.**]** *the preliminary determination made under section 703(b) was published in the Federal Register.*

Subtitle B—Imposition of Antidumping Duties

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Sec. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) Initiation by Administering Authority.—

(1) In general.—* * *

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(e) Surge of Imports.—

(1) MONITORING AND SUSPENSION OF LIQUIDATION.—If the determination under subsection (c) is affirmative, or if the investigation is commenced under subsection (a), the Administering Authority shall immediately—

(A) notify the United States Customs Service of such determination and direct customs officers to collect and forward to the Administering Authority (at least once every 7 days until a final determination is made under section 735(a) or the investigation is terminated) information on the volume and value of entries of the class or kind of merchandise which is the subject of the investigation, and

(B) begin monitoring (until a final determination is made under section 735(a) or the investigation is terminated) the volume of imports of such merchandise to determine whether the volume of such imports has significantly increased over the volume of such imports prior to the date on which the petition is filed under subsection (b)(1) or on which the investigation is commenced under subsection (a).

(2) PUBLICATION OF DETERMINATION.—The Administering Authority shall publish in the Federal Register notice of any affirmative determination made under paragraph (1)(B) as soon as practicable.

(3) LIMITATION ON DETERMINATION.—No determination may be made under paragraph (1)(B) prior to the date that is 60 days after—

(A) the date on which the petition that initiated the investigation is filed under subsection (b), or

(B) the date on which the investigation is commenced under subsection (a).

(4) SUSPENSION OF LIQUIDATION.—On the date that is 70 days after the date on which a petition is filed under subsection (b), or on which the investigation is commenced under subsection (a), the Administering Authority shall order the suspension of liquidation of all entries of the merchandise that is the subject of the investigation which are entered, or withdrawn from warehouse, for consumption on or after the date on which such order is issued. Notice of such suspension shall be published in the Federal Register on the date on which such order is issued.

SEC. 733. PRELIMINARY DETERMINATIONS

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—* * *

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—Within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering au-

thority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price. *If the determination of the Administering Authority under this paragraph is negative, the Administering Authority shall terminate the suspension of liquidation ordered under section 732(e)(4).*

* * * * * * *

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

[(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.

[(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and]

(1) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise subject to the investigation which is entered, or withdrawn from warehouse for consumption on or after the date of publication of the notice of such determination in the Federal Register in an amount equal to the estimated average amount by which the foreign market value exceeds the United States price, and

[(3)] *(2)* shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—[If a petitioner alleges critical circumstances in its original petition, or by amendment] *If the Administering Authority has made an affirmative determination under section 732(e)(1)(B)* at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was importd knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

[(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.]

(2) SUSPENSION OF LIQUIDATION; POSTING OF BOND.—If the determination of the Administering Authority under paragraph (1) is affirmative—

(A) the Administering Authority shall order the posting of a cash deposit, bond, or other security under subsection (d)(1) for, and

(B) any suspension of liquidation ordered under this subtitle shall apply to, or, if notice of such suspension of liquidation is already published, be amended to apply to,

unliquidated entries or merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which notice of the preliminary determination made under subsection (b) is published in the Federal Register.

* * * * * * *

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—* * *

* * * * * * *

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—* * *

(2) LIQUIDATION OF ENTIRES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under [section 733(d)(1),] *this subtitle,*

(ii) if the liquidation of entries of such merchandise was suspended [pursuant to a previous affirmative preliminary determination] *under this subtitle* in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section [733(d)(2).] *733(d)(1).*

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the merchandise subject to the investigation shall be suspended under **[**section 733(d)(1),**]** *this subtitle,* or, if the liquidation of entries of such merchandise was suspended **[**pursuant to a previous affirmative preliminary determination**]** *under this subtitle* in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section **[**733(d)(2) *733(d)(1)* may be adjusted to reflect the effect of the agreement.

* * * * * * *

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—* * *

* * * * * * *

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering shall—

(A) terminate the suspension of liquidation under **[**section 733(d)(1),**]** *this subtitle,* and

(B) release any bond or other security, and refund any cash deposit, required under section **[**733(d)(2).**]** *733(d)(1).*

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation **[**under section 733(d)(1)**]** of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

* * * * * * *

(l) Effect of Termination of Investigation.*—If an investigation under this subtitle is terminated, the Administering Authority shall—*

(1) terminate any suspension of liquidation ordered under this subtitle with respect to entries of the merchandise which was the subject of the investigation, and

(2) release any cash deposit, bond, or other security required under this subtitle with respect to such entries.

SEC. 735. FINAL DETERMINATIONS.

(a) Final Determination by Administering Authority.—

(1) General rule.—* * *

* * * * * * *

[(3) Critical circumstances determinations.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

[(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

[(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

[(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.]

(3) Critical circumstances.*—If the final determination of the Administering Authority under paragraph (1) is affirmative and the Administering Authority has made an affirmative determination under section 732(e)(1)(B), such final determination shall also contain a finding as to whether—*

(A) either—

(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(b) Final Determination by Commission.—

(1) In general.—* * *

* * * * * * *

[(4) Certain additional findings.—

[(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

[(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.]

(4) Additional finding if threat of injury found.—If the final determination of the Commission under paragraph (1) is that there is no material injury but that there is threat of material injury such determination shall include a finding as to whether material injury by reason of imports of the merchandise with respect to which the Administering Authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) Effect of Final Determinations.—

(1) Effect of affirmative determination by the administering authority.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) * * *

(B) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order [under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and] *the suspension of liquidation of all entries of the merchandise that is the subject of the investigation and shall order under section 733(d)(1)* the posting of a cash deposit, bond, or other security.

(2) Issuance of order; effect of negative determination.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination [and the administering authority shall—].

[(A) terminate the suspension of liquidation under section 703(d)(1), and

[(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

[(3) Effect of negative determinations under subsections (a) (3) and (b) (4) (A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

[(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

[(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).]

(3) EFFECT OF CERTAIN DETERMINATIONS ON SUSPENSIONS OF LIQUIDATION AND COLLECTION OF BOND OR CASH DEPOSIT.—If the determination of the Administering Authority under subsection (a)(2) is negative or the determination of the Commission under subsection (b)(1) is that there is no material injury but that there is a threat of material injury or that the establishment of an industry in the United States is materially retarded, the Administering Authority shall—

(A) terminate any suspension of liquidation ordered under this subtitle of entries of the merchandise that is the subject of the investigation which were entered, or withdrawn from warehouse, for consumption before the date on which the preliminary determination made under section 733(b) was published in the Federal Register, and

(B) release any bond or other security and refund any cash deposit required under this subtitle with respect to such entries.

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (A)(3).—If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall—

(A) * * *

(B) in cases where the preliminary determination by the administering authority under section 733(b) was affirmative, but the preliminary determination under section 733(e)(1) was negative, shall modify any suspension of liquidation *previously ordered under this subtitle* and security requirement previously ordered under section [733(d)] *733(d)(2)* to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which [suspension of liquidation was first ordered] *the preliminary determination made under section 733(b) was published in the Federal Register*; or

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 735(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which [suspension of liquidation is first ordered.] *the preliminary determination made under section 733(b) was published in the Federal Register.*

* * * * * * *

SEC. 736. ASSESSMENT OF DUTY.

(a) Publication of Antidumping Duty Order.—* * *

(b) Imposition of Duty.—

(1) General rule.—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, *this subtitle* but for the suspension of liqudiation under [section 733(d)(1)] *this subtitle* would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under [section 733(d)(1),] *this subtitle,* shall be subject to the imposition of antidumping duties under section 731.

* * * * * * *

(c) Security in Lieu of Estimated Duty Pending Early Determination of Duty.—

[(1) Conditions for waiver of deposit of estimated duties.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

[(A) an affirmative preliminary determination by the administering authority under section 733(b), or

[(B) if its determination under section 733(b), was negative, an affirmative final determination by the administering authority under section 735(a).

and before the date of publication of the affirmative final determination by the Commission under section 735(b)]

(1) Conditions for waiver of deposit of estimated duties.—The Administering Authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

(C) on the basis of information presented to the Administering Authority by any manufacturer, producer, or exporter

in such form and within such time as the Administering Authority may require, the Administering Authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the Administering Authority under section 733(b), or

(ii) if its determination under section 733(b) was negative, an affirmative final determination by the Administering Authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the person described in subparagraph (C) provides credible evidence that the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); an

(E) the data concerning the foreign market value and the United States price apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

* * * * * * *

(4) Provision of confidential information; written comments.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the Administering Authority shall—

(A) make all confidential information supplied to the Administering Authority under paragraph (1) available under a protective order described in section 777(c)(1)(B) to all interested parties described in subparagraph (C), (D), (E), or (F) of section 771(9), and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

* * * * * * *

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) Deposit of Estimated Antidumping Duty Under Section [733(d)(2).] *733(d)(1).*—If the amount of a cash deposit collected as security for an estimated antidumping duty under section [733(d)(2)] *733(d)(1)* is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference of entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

* * * * * * *

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—* * *

* * * * * * *

(7) MATERIAL INJURY.—

(A) IN GENERAL.—* * *

* * * * * * *

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant economic factors—

(I) * * *

* * * * * * *

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, **[**and**]**

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to find orders under section 706 or 736, are also used to produce the merchandise under investigation**[**.**]**,

(IX) any combination of coordinated government actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the beneficiary to become more competitive in the export of any class or kind of merchandise and to cause, or threaten to cause, material injury to the United States, and

(X) the extent to which the United States is the focal point for exports of the merchandise by reason of restraints on exports of the merchandise

to, or on imports of the merchandise into, third country markets.

* * * * * * *

(9) **INTERESTED PARTY.**—The term "interested party" means—
(A) * * *

* * * * * * *

[(C) a manufacturer, producer, or wholesaler in the United States of a like product,]

(C) a manufacturer, producer, or wholesaler in the United States of a like product, or of—

(i) major parts,
(ii) materials,
(iii) components, or
(iv) assemblies or subassemblies,

which, due to inherent characteristics, are intended to be incorporated into a like product.

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product *or of a major part, material, component, assembly, or subassembly described in subparagraph (C),*

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product *or of a major part, material, component, assembly, or subassembly described in subparagraph (C)* in the United States, and

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product *or of a major part, material, component, assembly, or subassembly described in subparagraph (C)*

* * * * * * *

(16) **SUCH OR SIMILAR MERCHANDISE.**—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

The Administering Authority may waive the requirement under subparagraphs (A), (B), and (C) that the merchandise which is subject to investigation be produced by the same person if a government agency, authority, or instumentality in the country where the merchandise is produced follows, or in the relevant past has followed, a policy, practice, or pattern of allocating contracts for the purchase of, or establishing quantitative requirements for, the merchandise among users in that country.

* * * * * * *

(18) DIVERSIONARY DUMPING.—

(A) In general.—Diversionary dumping occurs when any material or component which—

(i) is incorporated into the merchandise under investigation, and

(ii) has been the subject of a previous investigation under subtitle B,

is purchased by the manufacturer or producer of such merchandise at a price that is less than the foreign market value of such material or component.

(B) DETERMINATION OF FOREIGN MARKET VALUE.—

(i) ANTIDUMPING DUTY IN EFFECT.—If an antidumping duty order is in effect with respect to the material or component described in subparagraph (A) at the time a determination of the existence of diversionary dumping is made, the foreign market value of such material or component used in determining the amount of such duty shall be used in determining the existence of diversionary dumping.

(ii) NO ANTIDUMPING DUTY IN EFFECT.—If the previous investigation under subtitle B has been terminated or suspended because of the entry in force of any arrangement, agreement, or understanding entered into or undertaken by the United States and any foreign country or foreign customs union containing quantitative limitations, restrictions, or other terms relating to the importation into the United States of the material or component described in subparagraph (A), the determination of the foreign market value of such material or component which is used in determining the existence of diversionary dumping shall be based upon the best available evidence, including the allegations contained in any petition filed with respect to any previous investigation of such material or component under subtitle B and any information gathered in such previous investigation.

SEC. 771A. UPSTREAM SUBSIDIES.

(a) Definition.—The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), or (iii) by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the subsidy is provided by the customs union *or is paid or bestowed under the authority of any statute, regulation, policy, or practice of the customs union or any of its members.*

(b) Determination of Competitive Benefit.—

(1) In general.—* * *

* * * * * * *

(3) Diversion.—

(A) Determination.—If—

(i) a countervailing duty order is in effect with respect to an input product, or

(ii) an input product is subject to any arrangement, agreement, or understanding entered into, or undertaken by, the United States and any foreign country or foreign customs union which contains quantitative limitations or restriction on, or other terms relating to, the importation of such input product into the United States,

and a subsidy continues to be paid or bestowed on such input product after the date on which such countervailing duty order was issued or on which such agreement took effect, the Administering Authority shall determine whether an increase in imports of the merchandise under investigation has occurred since such date.

(B) Presumption.—If the determination made under subparagraph (A) is affirmative, the Administering Authority shall presume that a competitive benefit is being bestowed on the merchandise under investigation.

* * * * * * *

SEC. 773. FOREIGN MARKET VALUE.

(a) Determination; Fictitious Market; Sales Agencies.—For purposes of this title—

(1) In general.—The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose

account) the merchandise is imported to any other person who is not described in subsection (e)(3) with respect to such person—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. **[**In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.**]** *In the ascertainment of foreign market value for purposes of this title—*

(i) no pretended sale of offer for sale, and no sale or offer for sale intended to establish a ficitious market, shall be taken into account; and

(ii) if a government agency, authority, or instrumentality in the country from which such or similar merchandise is exported follows or has followed a policy, practice, or pattern of requiring users in that country to purchase under contract or agreement such or similar merchandise for periods of not less than 5-year duration, the prices under such contracts or agreements may be taken into account.

* * * * * * *

(4) OTHER ADJUSTMENTS.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) * * *

(B) other differences in circumstances of sale; **[**or**]**

(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value**[**,**]** *; or*

(D) diversionary dumping;

then due allowance shall be made therefor.

(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question *(including such adjustments as may be appropriate to take into account the effects of diversionary dumping on such costs)*, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. [If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

such sales shall be disregarded in the determination of foreign market value.] *The Administering Authority shall include in calculating the cost of producing the merchandise the value of any benefit the producer or manufacturer has received from government research and development programs (including programs supporting or coordinating cooperative research and development among producers or manufacturers). The value of such a benefit shall be considered the research and development expense the producer or manufacturer would have incurred if the producer or manufacturer had done the research and development alone. If the Administering Authority determines that sales made at less than cost of production have been made over an extended period of time and in substantial quantities, such sales shall be disregarded in the determination of foreign market value.* Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

* * * * * * *

(e) Constructed Value.—

(1) Determination.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials *or components, as appropriately adjusted for diversionary dumping* (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used), and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business.

* * * * * * *

(h) Special Rules for Determining Cost of Production and Constructed Value.—Before the Administering Authority—

(1) makes a determination under subsection (b) that sales of the merchandise in the home market are at prices which represent less than the cost of producing the merchandise, or

(2) determines constructed value under subsection (e),

the Administering Authority shall determine whether imports of the merchandise into the home market have been unreasonably restrained. If such determination is affirmative, the Administering Authority shall base the determinations described in paragraphs (1) and (2) on a per-unit cost rate of capacity utilization appropriately adjusted to reflect the level of home market sales that would occur in the absence of the unreasonable restraints found to exist.

* * * * * * *

SEC. 777. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—* * *

* * * * * * *

(b) CONFIDENTIAL INFORMATION.—

(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which confidential treatment is requested be accompanied by—

(A) * * *

(B) either—

(i) a statement which permits the administering authority to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

[(ii) a statement that the information should not be released under administrative protective order.**]**

(ii) a statement that the information should not be relesed under an administrative protective order, or a statement of the reasons why the information should not be so released, and a statement of whether the person submitting the information will withdraw the information if the Administering Authority or the Commission determined to release the information under subsection (c).

* * * * * * *

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

[(A) IN GENERAL.—Upon receipt of an application, (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).]

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the type of information sought and sets forth reasons for the request, the Administering Authority and the Commission shall make confidential information submitted by any other person to the investigation available under a protective order described in subparagraph (B), unless the person who submitted such information establishes that substantial harm to the business operations of such person would result from such disclosure.

* * * * * * *

(C) TIME LIMITATION.—The determination of whether to make information available under this paragraph, and the availability of such information under a protective order if such determination is affirmative, shall occur not later than 5 days (or 10 days if the statements described in subsection (b)(1)(B)(ii) are submitted with such information) after the later of—

(i) the date on which such information is requested under subparagraph (A), or

(ii) the date on which such information is submitted to the Commission or the Administering Authority.

* * * * * * *

SEC. 779. DRAWBACKS.

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title [shall] *may not* be treated as any other customs duties.

DEPARTMENT OF COMMERCE ORGANIC ACT

An Act To establish the Department of Commerce and Labor

* * * * * * *

[SEC. 13. That this Act shall take effect and be in force from and after its passage: *Provided, however,* That the provisions of this Act other than those of section twelve in relation to the transfer of any existing office, bureau, division, officer or other branch of the public service or authority now conferred thereon, to the Department of Commerce and Labor shall take effect and be in force on the first day of July, nineteen hundred and three, and not before.]

SEC. 13. FOREIGN COMMERCE DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Commerce (hereinafter in this Act referred to as the "Secretary") shall establish, using existing personnel, in the Department of Commerce the Foreign Commerce Development Program which shall, on a continuous basis—

(1) undertake an analysis of Federal, State, and local regulation of both foreign industries and United States industries and its actual or potential effect on interstate and foreign commerce;

(2) evaluate and propose responses to the trade barriers identified in the report pursuant to section 181 of the Trade Act of 1974;

(3) compile a comprehensive inventory of acts, policies, and practices of foreign countries which may constitute barriers to (or other distortions of) international trade or which may limit the access of United States industries to such foreign countries, which inventory shall include, but not be limited to—

(A) a description of each act, policy, or practice and of its operation in the particular country,

(B) an identification of the goods, services, or investment affected,

(C) an identification of the legal basis for such act, policy, or practice in the particular country, and

(D) an assessment of the impact, or potential effects, of such acts, policies, or practices of United States industries;

(4) identify and analyze all programs of the foreign governments that direct resures to a particular foreign industry or industries to create international competitive advantage, and evaluate the impact, or potential effects, of such programs on the international competitiveness of United States industries, and such identification and analysis shall include a description of the nature and extent of such intervention, including, but not limited to—

(A) direct or indirect subsidies to a foreign industry or industries,

(B) special protection of the foreign home market, whether through formal government action, including, but not limited to, tariffs, quotas, licensing requirements, or investment restrictions, or informal government action, including but not limited to preferential procurement, administrative guidance to the industry, or waiver of generally applicable antitrust law,

(C) support of research and development programs,

(D) programs designed to encourage the provision of capital to a particular enterprise or group of enterprises or industry or group of industries,

(E) the promotion, support, or tolerance of, an industry cartel or cartels,

(F) the provision of conditional loans where the conditions for repayment are not likely to occur within twelve months of the date of the initiation of the investigation,

(G) the provision of capital, loans or loan guarantees which would not otherwise be available from commercial sources,

(H) information concerning the likelihood of goods or services of foreign industries being sold in the United States at less than fair value as a result of such acts, policies, or practices, and

(I) any information needed to complete the report described in subsection (c)(1).

(b) Strategies and Policies.*—On the basis of the analyses, studies, information, and inventory described in the preceding subsection, the Secretary shall formulate strategies and policies designed to increase the competitiveness of United States industries in interstate and foreign commerce.*

(c) Reports.*—(1) On an annual basis commencing with 1986, the Secretary shall prepare a report (which shall be submitted to the Energy and Commerce Committee of the House of Representatives and the Commerce, Science, and Transportation Committee of the Senate and to the President no later than 120 days after the close of the period covered by the report) containing—*

(A) a summary of the analyses and studies, described in subsection (a) (1) and (2), the inventory described in subsection (a)(3) in its entirety;

(B) a description of all strategies and policies developed pursuant to subsection (b) and recommendations for legislation, based on such analyses and information, designed to increase the international competitiveness of United States industries in interstate and foreign commerce, respond to the trade practices of foreign countries, and ensure full reciprocity for United States products, services, and investment in foreign markets;

(C) assessments of the effects of foreign industrial and trade policies on specific United States industries, trade, and employment, and an evaluation of actual or foreseeable economic and technological developments, in the United States and abroad, which have affected or will affect the competitive position of United States industry or of particular United States industry sectors;

(D) an identification and description, with particularity, of actual or foreseeable developments in the United States and abroad which—

(i) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry,

(ii) present significant opportunities for United States industries to compete in new geographical markets or product markets or to expand their position in established markets, or

(iii) create a significant risk that United States industries will be unable to compete successfully in significant future markets; and

(E) a specification, with particularity, of the industry sectors affected by the developments described in clause (i).

(d) Program Priorities.*—In implementing the program described in subsection (a), the Secretary shall give priority to those foreign countries and product sectors in which the United States has significant economic and commercial interests. The Secretary*

shall consult with appropriate Federal agencies and private sector advisory groups in determining such priorities.

(e) COLLECTION.—The Secretary is authorized to collect such information, and to seek the advice of such persons representing United States industries, labor, consumers, and members of the academic community, as he considers necessary to carry out the provisions of this section.

SEC. 14. DETERMINATIONS BY THE SECRETARY REGARDING DISCRIMINATORY PROCUREMENT PRACTICES AND REGULATORY REQUIREMENTS

(a) FINDINGS.—The Congress finds that—

(1) discriminatory procurement practices and regulatory requirements of foreign governments are denying United States producers fair and equitable market opportunities;

(2) many overseas markets are closed to American producers because foreign governments—

(A) purchase such products only from their own domestic producers, or require domestic purchasers to purchase from domestic sources; and

(B) apply regulatory requirements and restrictions in such a manner as to deny effectively to United States producers access to those markets;

(3) the GATT Government Procurement Code does not address such problems because many industrial sectors are excluded from coverage under the Code;

(4) because procurement is open in the United States and closed in other markets, United States producers are denied benefits that foreign producers have such as—

(A) unit cost reductions from a greater scale of production,

(B) more timely recoupment of research and development expenditures and other fixed costs, and

(C) a guaranteed (riskless) market in the home country; and

(5) such lack of fair and equitable market opportunities results in—

(A) lower United States investment,

(B) less research and development and product innovation, and

(C) lower output and employment levels, than would be the case if United States products could compete on a fair basis in foreign markets.

(b) PETITIONS.—(1) Any interested person may file a petition requesting the Secretary to undertake an investigation to determine if—

(A) any foreign government is engaging in any discriminatory procurement practice or imposing a discriminatory regulatory requirement; and

(B) that practice or requirement is having harmful effects on United States trade.

The petition shall set forth the allegations in support of the request. The Secretary shall review the allegations in the petition and, not later than 45 days after the date on which he receives the petition, *shall determine whether to initiate an investigation under subsection (c).*

(2) If the Secretary determines not to initiate an investigation with respect to a petition filed under paragraph (1), he shall inform the petitioner of his reasons therefor and, within 10 days after the date on which the petitioner is so informed, shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(3) If the Secretary determines to initiate an investigation with respect to a petition under paragraph (1), he shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing within the 30-day period after the date of determination or on a date after such period if agreed to by the petitioner. The Secretary shall also consult, as appropriate, with the industry sector advisory panels established under section 15(d)(1), and the appropriate committees of Congress.

(c) INVESTIGATIONS.—The Secretary shall initiate an investigation under this subsection if he—

(1) determines to do so under subsection (b);

(2) determines to do so on his own initiative; or

(3) has reason to believe, on the basis of information collected under section 13(a) (3) and (4) that the circumstances described in subsection (b)(1) (A) and (B).

Upon initiating the investigation under this subsection, the Secretary, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the investigation. In preparing and conducting such consultations, the Secretary shall seek advice and information from the industry sector advisory panels established under section 15(d)(1).

(d) PRELIMINARY FINDINGS.—(1) Within 60 days from the initiation of the investigation under subsection (c), the Secretary shall make a preliminary finding as to whether the circumstances described in subsection (b)(1) (A) and (B) exist. Such preliminary finding shall set forth whether action by the United States is appropriate to respond to those circumstances, an explanation of the reasons for such finding, and in the case of an investigation based on a petition filed under subsection (b), findings of facts with respect to each of the petitioner's allegations and the basis therefor.

(2) The Secretary shall publish a preliminary finding made under paragraph (1) in the Federal Register and provide an opportunity for interested parties to comment thereon.

(e) FINAL DETERMINATION.—Within 120 days after the initiation of the investigation under subsection (c), the Secretary shall make a final determination and, if affirmative, the discriminatory procurement practice or regulatory requirement involved shall be treated as being an act, policy, or practice of a foreign government or instrumentality under section 301(a)(1)(B) of the Trade Act of 1974 that is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

SEC. 15. ESTABLISHMENT OF SECTORAL RESEARCH AND MONITORING CAPABILITY.

(a) The Secretary shall establish and implement a continuing program to assess and evaluate the industrial and trade policies of other countries and the effects of such policies on United States industries, trade, and employment (including the effect on the export competitiveness of specific enterprises, industries, or groups thereof).

(b)(1) The Secretary shall make available sufficient analysis and information to the Congress and other agencies and courts of the United States Government for the purpose of ensuring consideration by the Congress and such agencies and courts of the competitive impact of pending administrative or judicial decisions of such agencies or courts that could significantly enlarge the access of foreign products and services to the United States market.

(2) The Secretary shall consult with appropriate foreign governments to assure that conditions of access in foreign markets for products and services subject to the administrative and judicial decisions identified in paragraph (1) are equivalent in effect to those existing in the United States.

(3) The Secretary shall report to the Committee on Energy and Commerce in the House and the Committee on Commerce, Science, and Transportation in the Senate with respect to the results of the consultations required under paragraph (2).

(c)(1) The Secretary shall establish a special industry sector advisory panel for each industry sector specified in any report submitted under section 13 that is of national significance by reason of—

(A) the employment or capital resources of such sector,

(B) the impact on national defense of such sector, or

(C) the importance of such sector as a supplier to, or customer of, other United States industries.

The Secretary may establish an industry sector advisory panel for any other industry.

(2) Each panel established under paragraph (1) shall include representatives of—

(A) business,

(B) labor,

(C) government,

(D) private sector advisory committees established under section 135 of the Trade Act of 1974, and

(E) other individuals or representatives of groups whose participation is considered by the Secretary of Commerce to be important to developing a full understanding of the competitive position of the industry sector involved and the economic importance of such sector to the United States

(3) Each advisory committee shall be cochaired by an industry representative and a labor representative, and each chair may establish separate working groups as a part of the committee.

(4) Each panel established under paragraph (1) shall assess the actual or potential dislocation, challenge, or opportunity for the industry sector involved and formulate specific recommendations for responses by business, government, and labor.

(5) Any discussion held by a panel established under paragraph (1), or any working group operating under the auspices of such a

panel, shall not be considered to violate any Federal or State antitrust law.

(6) Any panel established under paragraph (1), or any working group operating under the auspices of such a panel, shall not be subject to the provisions of the Federal Advisory Committee Act.

(7) Each panel established under paragraph (1) shall terminate 30 days after making its recommendations, unless the Secretary specifically requests that the panel continue in operation.

(8) The views and recommendations of each advisory panel shall be included as appendices to the report submitted under section 13. If any report that is submitted under subsection (c) after a panel established under paragraph (1) has terminated specifies conditions which had previously required the creation of such panel, the Secretary of Commerce shall again establish such a panel although the Secretary may change the membership of such panel.

(d) Each agency of the United States shall provide to the Secretary, upon request, such information as may be necessary to enable the Secretary to carry out the purposes of this section.

(e) The Secretary shall enforce appropriate measures to prevent loss or unautorized disclosure of classified informations.

SEC. 16. INDUSTRY ASSESSMENT AND COMPETITIVENESS STRATEGY.

(a) After the International Trade Commission commences an investigation under section 201(a) of the Trade Act of 1974 on the basis of a petition filed by—

(1) firms,
(2) a certified or recognized union, or
(3) a group of workers,

which represent a significant portion of the industry, the Secretary shall establish an advisory group for the industry if such representatives of the industry request, in the petition, that such an advisory group be established.

(b) Each advisory group established under this section shall be cochaired by the Secretary and the United States Trade Representative and shall consist of—

(1) individuals appointed by the Secretary from among the petitioners who are representative of the firms and of the workers in the domestic industry, and

(2) officials of the Department of Labor, the Department of Commerce, and the Office of the United States Trade Representative.

(c)(1) Each advisory group established under this section shall prepare for the industry concerned an assessment of current problems and a strategy to enhance competitiveness that sets forth objectives and specific steps that workers and firms could usefully undertake to improve the ability of the industry to compete or to assist the industry to adjust to new methods of competition.

(2) Each advisory group established under this section shall include in the assessment and strategy prepared under paragraph (1) a determination of the ability of producers in the industry concerned to generate adequate capital to finance the modernization of plant and equipment or to otherwise enhance competitiveness (including any associated research and development) specified in such assess-

ment and strategy. Such determination shall include an estimate of the overall capital requirements of such industry.

(3) The assessment and strategy prepared under paragraph (1) shall set forth those actions which may be taken by the appropriate Federal agencies under existing authority, or under new legislation, to assist in achieving the objectives set forth in the assessment and strategy.

(4) Each advisory group shall submit copies of the assessment and strategy prepared under paragraph (1) to the Commission, the United States Trade Representative, the Secretary of Labor, and the Secretary of Commerce, within 120 days after the date on which the Commission commences the investigation with respect to the industry under section 201 of the Trade Act of 1974.

(d) After an assessment and strategy is submitted by an advisory group under subsection (c)(4) and before the close of the period referred to in section 202(b) of the Trade Act of 1974, the Secretary shall seek to obtain, on a confidential basis, information from the individual members of such advisory group regarding—

(1) how such members intend to act upon the recommended objectives and actions specified in such assessment and strategy, and

(2) any other actions such members intend to take which will foster the objectives described in subsection (c)(1).

The Secretary shall transmit such information to the Commission, the Secretary of Labor, and the United States Trade Representative on a confidential basis. The Secretary shall include in the transmission of such confidential information any other information obtained on the capital requirements of the industry referred to in section 201(b)(2)(B) of the Trade Act of 1974.

(e) The Secretary, the Secretary of Labor, and the United States Trade Representative shall provide such staff, information, personnel, and administrative services and assistance to advisory groups established under this section as such advisory groups may deem necessary to enable such advisory groups to carry out their responsibilities under this section. The Secretary may request other executive branch agencies which administer programs that may contribute to enhancing the competitiveness of the domestic industry concerned to assist such advisory groups in carrying out their responsibilities under this section.

(f)(1) If an assessment and strategy is submitted under subsection (c), the Commission, the United States Trade Representative, the Secretary of Labor, and the Secretary shall consider such assessment and strategy in making any determination, or taking any action, under the provisions of this title.

(2) Neither the failure of the representatives of an industry to request the establishment of an advisory group under subsection (a) nor the failure of an advisory group to submit an assessment and strategy under subsection (c) shall be taken into account in making any determination, or taking any action, under the provisions of title II of the Trade Act of 1974.

SEC. 17. SHORT TITLE.

This Act may be cited as the "Department of Commerce Organic Act".

SECTION 232 OF THE TRADE EXPANSION ACT OF 1962

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) * * *

(b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President, *within the 90-day period after the day on which the advice was received,* shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

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ADDITIONAL VIEWS OF HON. JACK FIELDS

I support the Trade Law Modernization Act, but I do so with some reservations about the details of this comprehensive, far reaching legislation. My support is based on my serious concern about the reasons for and the effects of what is projected to be an almost $150 billion U.S. trade deficit for 1985. This figure is larger than the Gross National Product of most countries of the world. It is so large we cannot accurately gauge its complex impact on our economy, but we do know it has resulted in slower growth, lost jobs, and a basic realignment of our economy from manufacturing to service. Clearly, we must attempt to bring back into balance the economic benefits of fairly traded imports and the need to increase exports and assure growth in our American industrial base.

The massive changes in the world trade arena in the past decade have demonstrated that our current trade laws are ineffective in dealing with new and sophisticated trading practices that may unfairly injure American industries. Consequently, we need to reform U.S. trade law to meet these new challenges in the world market. H.R. 3777 effects many of these necessary, constructive changes in U.S. trade policy and enforcement.

However, the bill makes certain changes in our trade law that, in my view, are worrisome because their long term effects have not been thoroughly explored nor their ramifications fully understood. In particular, the changes in the causation standard in Section 201 of the Trade Act of 1974 would, in my opinion, run the risk of substantially increasing efforts by troubled industries to obtain import protection rather than face difficult but necessary economic adjustments. Our trade laws should be used to combat unfair or illegal practices, and to encourage competition in the U.S. and world marketplaces, not as a disincentive to improve competitiveness. I look forward to a complete examination and debate of this issue before the Full House of Representatives.

I also want to emphasize my commitment to assuring that Congress not pass legislation which violates our international trade agreements. Such violations could result in retaliation or, worse, a trade war. Since this legislation is intended to lessen, not encourage, trade tensions, I have worked closely with my colleagues on the Energy and Commerce Committee to fashion the legislation and the language of this report to make it clear that the provisions of the Trade Law Modernization Act do not violate our international trade agreements. Of course, if such a violation is found, I anticipate that our government will take appropriate steps to remedy the problem. I continue to encourage and support the commencement of a new round GATT talks to address the issues that have arisen in the world trading system since the contracting parties last undertook such talks.

Just as important, in attempting to correct our trade problems, we must keep in mind that two major components of those problems are monetary and macroeconomic. Our trade deficit reflects global and domestic economic problems, especially the Federal deficit. We must reduce that deficit if we are to keep the value of the dollar in some equilibrium with other currencies, for even more than unfair and illegal trade practices, the trade deficit is inextricably linked to overvaluation of the dollar. Without relief in this area, our efforts to remove all trade barriers and stop other objectionable actions, even if fully successful, will not sufficiently reduce the deficit.

I support H.R. 3777 because I believe that its basic intent is good. As the legislation receives further consideration by the House, we should carefully review each of its provisions, to guarantee that they constructively attack the true causes of an overwhelming trade crisis, and avoid catering to special interests at the expense of consumers and competitive industries.

JACK FIELDS.

DISSENTING VIEWS ON H.R. 3777 BY HON. HOWARD C. NIELSON

The Trade Modernization Act is an attempt by Congress to update and improve our trade laws. This is laudable and it is understandable that Congress would wish to make our trade laws responsive to the current worldwide trade conditions. I consider this to be a positive approach and by far preferable to the many purely protectionist bills that are currently being considered by the House of Representatives. However, there are some parts of the bill that we find to be troublesome and I particularly refer to the change in the Section 201 provisions of the bill.

Section 201 of the Trade Act of 1974 allows an industry to file for trade relief if it feels it is being injured or threatened with an injury by a surge of foreign exports of that product or a similar product. Presently the industry must prove that the imports are a "substantial cause" of the injury or threat. The Trade Law Modernization Act would remove the word "substantial" and require that the industry prove that imports are only a "cause" and not a "substantial cause" of injury. I see this as a major change in our import laws and feel that we would be setting ourselves up for serious trade problems.

The deletion of the word "substantial" could open the flood gates for non-meritorious trade causes allowing every industry that has any foreign competition to file for import relief. It would lead to added pressure on the United States Trade Representative to impose tariffs and quotas on a wide variety of goods. Implementing these measures would, in turn, only lead to retaliation from our trading partners, substantially increased prices for consumers, and undue interference in the international markets.

Quotas and tariffs amount to nothing less than a hidden tax on our economy. And, as usual, this hidden tax becomes most burdensome on the poor and middle classes. We all are affected by increased prices and a lower standard of living.

The likelihood of retaliation by our trading partners has serious impact on our export industries. Farmers and manufacturers have lost hundreds of millions of dollars in the past due to foreign retaliation.

The Smoot-Hawley Tariff of 1930 was a disaster for the world economy. Ever since that time, Congress has known that trade restrictions are bad economic policy. Nothing has changed that fact. Let us not make the mistake of deleting one word from our trade laws that could have far reaching consequences. I feel that deleting the word "substantial" from the section 201 portion of our trade laws would make the hurdle too low for non-competitive industries and would only serve to hurt the United States in the long run by increasing prices, placing our export industries in jeopardy and sowing the seeds of an international trade war. I hope this most important word is added back in the bill when the legislation is considered in the Ways and Means Committee since that committee has jurisdiction over that section of the bill. If not, I intend to offer an amendment on the floor of the House. Unless and until the word "substantial" is added back into the bill, I feel that I cannot support this legislation.

HOWARD C. NIELSON.

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